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WATCHTOWER BIBLE AND TRACT SOCIETY, INC.,
REFERRED TO IN THE BRIEF

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 826

■

RALPH E. TAYLOR, *Appellant*

v.

STATE OF MISSISSIPPI, *Appellee*

■

APPELLANT'S BRIEF

Opinion Below

The opinion of the Supreme Court of Mississippi is reported in 194 Miss. ...., and in 11 So. 2d 663. It appears also in the record, pages 140 to 181.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statutes could be received as a matter of right on writ of error.

Timeliness

The judgment of the Supreme Court of Mississippi was rendered and entered January 25, 1943. (R. 140) The petition for appeal and other papers required by the rules of this court are filed within three months from the date of such judgment. R. 194-207.

The Statute

The statute, the constitutionality and validity of which is drawn in question here, is Chapter 178 of the General Laws of Mississippi duly enacted at the regular session of the Mississippi Legislature. The statute as originally enacted (House Bill 689) reads as follows:

HOUSE BILL No. 689

AN ACT to secure peace and safety of the United States and state of Mississippi during war; to prohibit acts detrimental to public peace and safety, and to provide punishment for same.

WHEREAS, The imperial government of Japan and governments of Germany and Italy, and associated nations, have expressly declared war upon these United States, a union of which the state of Mississippi is a part; and

WHEREAS, The very life and existence of these United States and the state of Mississippi are threatened by the said foreign powers, and there is now existing an acute unquestionable emergency in these United States and the state of Mississippi; and

WHEREAS, The preservation of the state of Mississippi and these United States depends upon a unity of effort on the part of all the citizens thereof, public necessity requires that the legislative department of the state of Mississippi and of these United States shall enact all laws and do all things necessary to insure domestic tranquillity and promote the common defense and general welfare of the people thereof; and

WHEREAS, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the state

of Mississippi are a menace to the safety of this State and these United States.

NOW, THEREFORE,

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

Sec. 2. Any person in possession of maps or parts of maps having marked thereon any industrial, storage or manufacturing plant, power or gas plant, facilities for waterworks, sewerage or sewerage disposal, transportation terminals, shops or facilities, oil and gas pumping and storage station, or government or public buildings, which may be used for information to the enemy or to aid the enemy, without proper authority, shall be prima facie evidence of the intention of such

persons to violate the law and, upon conviction of such possession, shall be punished by a fine not exceeding $1,000.00, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment.

Sec. 3. That any unnaturalized alien who is questioned on an alleged violation of the provisions of this act by a duly elected, acting and qualified law enforcement officer, and refuses to give information as his or her age, birthplace, parents, places of residence for the last five years; source, amount and extent of salary, compensation, livelihood, and means of travel, if any; marital status, or who answers falsely any such question, or refuses to submit to fingerprinting, or who defies or obstructs the law, or any officer of the law while he is performing his duties with relation to the provisions of this act shall be guilty of obstructing justice and shall be punished therefor as now provided by law.

Sec. 4. That this act is cumulative and does not repeal or interfere with any existing law, but is in addition thereto.

Sec. 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

Sec. 6. If any word, line, section or part of this act should hereafter be declared unconstitutional by the courts, such decision shall not be construed so as to render invalid the remainder of this act.

Sec. 7. That this act shall take effect and be in force from and after its passage.

Approved March 20, 1942.

The Indictment

MADISON COUNTY CIRCUIT COURT
June Term, A. D. 1942

STATE OF MISSISSIPPI, MADISON COUNTY

THE GRAND JURORS of the state of Mississippi, taken from the body of good and lawful men of Madison County, elected, empaneled, sworn and charged in inquire in and for said County at the Term aforesaid of the County at the Term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath present that R. E. TAYLOR AND MRS. R. E. TAYLOR late of the County aforesaid, on the 29th day of June A. D. 1942, at the County aforesaid did then and there wilfully, intentionally, unlawfully, and feloniously teach and disseminate teachings orally in that they said to Mrs. T. K. Joyner, Mrs. W. B. Denson, Mrs. Houston Bryant, and other persons whose names are at this time unknown to the Grand Jury, *"It is wrong for the President to send the army across for they are just being shot down for nothing.* Hitler will rule, he will not come over here to do it. He won't have to. If we would quit kneeling and worshiping our flag peace would come to us, and study and learn this literature and worship in the right way peace would come to earth, but as long as we go around worshiping our flag and government, we will never have peace, for we just worship our flag and government for our religion", and in that they said to the same parties, "It is wrong for the President to put our boys in uniform and send them across. The sooner we quit bowing down to the flag that much sooner we will have peace." and that they said to Mrs. T. K. Joyner and Mrs. W. B. Denson that their boys might have thought they were doing right, but that it is wrong to fight our enemies; and other words and teachings all said teachings and words were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to

create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America and the State of Mississippi. And did then and there wilfully, intentionally unlawfully, and feloniously distribute literature and printed matter in that they did hand out and distribute to Mrs. T. K. Joyner, Mrs. Houston Bryant, Mrs. W. B. Denson, and other persons whose names are unknown to the Grand Jury at this time, books and pamphlets entitled GOD AND THE STATE which contain the statement, "Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment—", and which contains other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled REFUGEES which contain the statements, "All nations of the earth today are under the influence and control of the demons . . . All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is on the losing side. All of such nations are against the Theocratic Government, that is the government or kingdom of the Almighty God . . . All are under the control of the invisible host of demons." and which contains other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled LOYALTY which contain the statement, "For the Christians to salute a flag is in direct violation of God's specific commandment", and which contain other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled END OF THE

AXIS POWERS, COMFORT ALL THAT MOURN which contain the statement, "Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world.", and which contain other paragraphs and statements of disloyalty to the United States of America; all of said literature, printed matter, books and pamphlets were published by Watchtower Bible and Tract Society, Inc., International Bible Students Association, and were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor, and respect the flag and government of the United States of America, and the State of Mississippi contrary to the form of Statute in such case made and provided, and against the peace and dignity of the State of Mississippi.

H. B. Gillespie
DISTRICT ATTORNEY

[R. 5-8]

Statement

Appellant is a native of Alabama. He is an ordained minister of Jehovah God and a witness for His Kingdom of righteousness. He is classified by his local draft board in Class IV-D, the classification of all ministers. (R. 106) During the first World War he volunteered for service and after serving eighteen months he purchased his release. (R. 126) Thereafter he joined the army again and served until 1931 when he was discharged. (R. 134) He has been one of Jehovah's witnesses for approximately twenty years and a full-time "pioneer" minister preaching the gospel together with his wife for about eleven years. (R. 106, 118) He came to Canton, Mississippi, about three months before the trial to perform missionary work from house to house

among the people. (R. 117) During this time he and his wife worked together and lived together at Canton. (R. 104, 107) Appellant was ordained by Jehovah God according to the scriptures recorded at Isaiah 61:1, 2. He preaches by distributing Bible literature from house to house among the people. This is the way commanded by Almighty God in the scriptures.—Isaiah 43:9-12; Matthew 24:14; Acts 20:20; Acts 5:42; Acts 3:23; 1 Corinthians 9:16. R. 123, 105.

In the latter part of May, 1942, he called at the home of Mrs. Houston Bryant and placed two books with her while working the neighborhood from house to house. (R. 46) One of these books entitled *Children* was introduced in evidence at the trial. (R. 54) During the early part of June, 1942, appellant called back in that neighborhood at the home of Mrs. Joyner, who lived across the street from Mrs. Bryant. Mrs. Bryant was at the home during the time of appellant's visit. (R. 46) Mrs. Joyner and Mrs. Bryant each obtained a combination of twenty-two books and each gave appellant a contribution of thirty-five cents. R. 47.

Prior to the time of this visit, the women had heard of Jehovah's witnesses and had been told by Mr. Vallia O'Neal, local official of the American Legion (R. 63), and Mr. Nelson Cauthen, County Attorney, that Jehovah's witnesses were against the government as were the books they distributed. (R. 58) Those officials advised the women to obtain the books as evidence against appellant. Both women admitted that they were prejudiced against appellant before he called and that they were entrapping the appellant for the Legionnaires and the prosecuting attorney. R. 63-64, 66.

Appellant knew that Mrs. Joyner had lost a son in the Pearl Harbor disaster of December 7, 1941. The women said that he stated he was calling to comfort Mrs. Joyner. (R. 59) The women could not remember the substance of the conversation that then took place or any particular words used, except those words described in the indictment which

they recalled clearly and verbatim. (R. 47-48, 58, 69, 90) During the course of the conversation in which appellant explained Bible prophecy and the books and booklets distributed, the two women accused appellant of saying:

> ". . . it was wrong for our President to send these boys across in uniform to fight our enemies; said they were being shot down for no purpose at all; said Hitler would rule, but he wouldn't have to come here to rule; and he said the quicker the people here quit bowing down and worshiping and saluting our Flag and Government, the sooner we would have peace. . . . He said it was wrong for us to fight our enemies; that we were being shot down for no purpose at all." (*Mrs. Bryant's testimony,* R. 47-48)

> " . . . the President was doing wrong to send our boys across to be killed for nothing, and that Hitler would rule, and he wouldn't have to come over here to do it, but he would do it; he would rule, but he wouldn't come here. And he said it was wrong for us to do that; and that no doubt my son thought he was doing the right thing by going where he was and doing what he did; but that it was wrong for him to fight the enemies, and to go there." (*Mrs. Joyner's testimony,* R. 69)

The women said that appellant arrived at the house with his wife and a little girl accompanying him. (R. 74) That appellant had his Bible with him and he began to talk about the beast with seven heads and ten horns, described in Revelation, as totalitarian or Hitler-rule. (R. 75) That he quoted Daniel 2:44: "In the days of these [totalitarian] kings shall the God of heaven set up a kingdom which shall never be destroyed; and . . . it shall break in pieces and consume all these kingdoms, and it shall stand forever." Appellant said to Mrs. Joyner that her boy would be resurrected and come back and live with her forevermore, and

that she would see him again on earth under conditions like heaven on earth. (R. 75-76) They were advised by appellant that there were two divisions of people, one a sheep class, and the other a goat class; and that they would have to study the literature to learn how to become of the sheep class. (R. 81) That appellant said that he was not selling the books but was distributing them to the people to show them the right way to live and to teach their children. (R. 55) Appellant quoted much scripture to them and stated that this would be the last war before Armageddon. R. 64.

It is not clear whether the women read all the books they obtained or not. Mrs. Bryant said that she had read the passages from the various books introduced by the prosecuting attorney into the evidence. (R. 53) However, it appears that all the books were immediately turned over to the prosecuting attorney. R. 64, 73.

Each woman testified that the statements made by the appellant did not make them feel against the government. It did not make them feel against the Flag. That they loved the government more after reading the literature and listening to appellant than before. R. 62, 91.

During the latter part of May or the first part of June, 1942, appellant and his wife called at the home of Mrs. W. B. Denson, one of the complaining witnesses. She said they stated their call to be for the purpose of comforting her concerning the loss of her son. (R. 83) She obtained a blue-covered book *Children* and several little books and testified that appellant stated

> " . . . it was wrong for the President to put uniforms on our boys and send them to fight the enemies; and they said the sooner we quit bowing down to the Flag—to the Government and her Flag, that much sooner would we have peace; that we couldn't have peace as long as we believed in saluting the flag. And he said that Hitler would rule; he said that he wouldn't

> come here, he wouldn't have to, but he would rule; and he said there were just as many sheep in Germany as there were here. And just at that time, Mrs. Taylor spoke up and says, 'You know you would hate to see a German mother lose her son as much as you would anyone else.' But he told me to study the literature, and that I would get comfort from it." (R. 83-84) "He said my boy was wrong, but no doubt he thought he was right, being where he was fighting the enemy, but it was wrong; that the President was wrong in putting a uniform on him and putting him in that fight down there; but he said if I would have the faith and study and believe, my boy would come back and I would have the opportunity of teaching him again, just as I would have to follow his instructions and all these things to do right." (R. 85-86)

Mrs. Denson said that nothing appellant did or said caused her to have any disrespect for the government or the flag, but on the contrary she added that it caused her to have "more respect for our government" than before. R. 91.

Appellant emphatically denies having said to any of the complaining witnesses or anyone else, that Hitler would rule at anytime anywhere on earth. He never discussed the flag at anytime he says. He denies discussing that it was wrong to put the uniform on the boys and send them over. He states that at the time of the conversation he made no attempt even to discuss this subject, and he denied several times making the statements attributed to him by the women. (R. 112-115, 117, 126-128) He testified that he was neither a pacifist nor a conscientious objector. R. 135.

Appellant had learned of the women's loss of their sons from his wife who had previously called at the homes of the ladies. (R. 107) He began talking to Mrs. Joyner about the Kingdom of God. Explanation was made that in the history

of man there were three worlds mentioned in the last chapter of 2nd Peter, the one before the flood, the present evil world and the new world to come. He said that the Scriptures indicated that we are nearing the time for the change-over from the present old world to the new world or God's Kingdom that all Christians for centuries have been praying for, "Thy kingdom come . . . " (R. 107) Then Mrs. Joyner and his wife began to converse about the loss of Mrs. Joyner's boy. Appellant said Jehovah's witnesses use the Scriptures for comfort and he began to explain about the two powers, the heavenly and the earthly. He admits saying: "I am not your boy's judge, or you either, but the Scriptures point out there is a little flock of 144,000 that will be in heaven, the earth will be made a paradise, and how the conditions of the Garden of Eden would be restored, and if Adam hadn't disobeyed the Lord they would be living here today. So, as they said, I spent about an hour and a half at one place; and I can remember *is* that; but those were what we spoke on, as we do in the ordained [ordinary] work talking about the kingdom." (R. 107-108) During the conversation, he mentioned Hitler in the connection that Hitler "represents totalitarian rule spoken of in the 17th chapter of Revelation", which is the beast described as having 7 heads and 10 horns. (R. 108) He told the women that "this picture is symbolic picture representing totalitarianism threatening all the world today". (R. 109) During the conversation he pointed out that according to Daniel, eleventh chapter, Hitler or totalitarian rule would not win the present conflict, for it is said: "he shall come to his end, and none shall help him" thus making it clear that Hitler would not win the war. R. 109.

Substantially the same conversation took place at the home of Mrs. Denson. (R. 111-113) During that conversation Mrs. Denson interjected: "I pray every night for every mother that has lost a son." Appellant says that was where the "praying for German mothers" came in and that

Mrs. Denson made the statement rather than he or his wife. R. 111.

During the conversation he pointed out that from Almighty God's standpoint there is no distinction between Baptist, Presbyterian and Catholic as the Bible teaches "one Lord, one faith, one baptism." (R. 111-112) Appellant said: "The Lord didn't recognize boundaries in establishing his kingdom, or the devil didn't either in establishing his. He is out today to use Hitler to bring on a great period of destruction and establish thereon his new order. The devil is a great mimic, and he loves to counterfeit what the Lord does, and do it first, or ahead of time; and so, the devil can read the Bible, and he knows the Kingdom is coming, and the Scriptures foretell clearly what will be the result." R. 112.

Appellant testified he refused to salute the flag. That he came to this conclusion in 1934 when he learned that the flag-salute movement in Germany was advanced by Hitler and used to regiment the people there. R. 114, 132.

Appellant admits distributing the various pieces of literature about which the women testified and every piece of literature introduced in evidence against him was admitted to have been distributed by him. R. 116.[1]

[1] The pieces of literature named in the indictment and introduced in evidence are:

(1) GOD AND THE STATE
Exhibit No. 2 — Witness Mrs. Bryant (R. 52)
Exhibit No. 2 — Witness Mrs. Joyner (R. 72)
Exhibit No. 2 — Witness Mrs. Denson (R. 91)

(2) REFUGEES
Exhibit No. 1 — Witness Mrs. Denson (R. 85)
Exhibit No. 3 — Witness Mrs. Bryant (R. 52)

(3) END OF AXIS POWERS — COMFORT ALL THAT MOURN
Exhibit No. 1 — Witness Mrs. Joyner (R. 71)
Exhibit No. 1 — Witness Mrs. Denson (R. 91)

[*Concluded on next page*]

History of Proceedings and Federal Questions Raised Below

CIRCUIT COURT PROCEEDINGS

Appellant filed and urged a motion to quash the indictment (R. 10-12), which was overruled and exception allowed. (R. 13) A demurrer to the indictment was duly filed and urged (R. 13-16), which was overruled and exception allowed. R. 16.

Appellant pleaded "not guilty". R. 17.

At close of the State's evidence appellant filed a motion for peremptory instruction requesting the trial court to exclude all the evidence and instructing the jury to return a verdict of "not guilty" (R. 92-94), which was overruled and exception allowed. (R. 94) At the close of the entire case and when both parties had rested their case appellant duly filed a motion for directed verdict requesting the court to exclude all the evidence and direct the jury to return a verdict of "not guilty" (R. 135-138), which was overruled and exception allowed. (R. 138) A motion for new trial was filed complaining of each of the foregoing rulings, which was overruled. R. pp. 37-39.

[NOTE 1—*Concluded from preceding page*]

The pieces of literature not named in the indictment but which are introduced in evidence are:

(4) CHILDREN
Exhibit No. 1 on cross examination
—Witness Mrs. Bryant (R. 54)

(5) HOPE
Exhibit 2(a) — Witness Mrs. Joyner (R. 73)

(6) LOYALTY
Exhibit No. 1 — Witness Mrs. Bryant (R. 51)
Exhibit No. 2 — Witness Mrs. Denson (R. 85)

(7) ORDINATION CERTIFICATE
Exhibit No. 1 — Witness Mr. Taylor (R. 105)
Exhibit A on cross examination
—Witness Mr. Taylor (R. 121)

One copy of each of the said exhibits has been previously tendered to this court. Each one of the above is printed and published by the Watchtower Bible and Tract Society, 117 Adams Street, Brooklyn, New York.

Under grounds 1 and 2 of the motion to quash (R. 10-11) the demurrer (R. 14), the motion for peremptory instruction (R. 92), and the motion for directed verdict (R. 135-136), appellant attacked the statute on the grounds that *on its face, by its terms, and as construed and applied* it abridged the rights of freedom of speech, press and of worship of Almighty God, contrary to the first and fourteenth amendments to the United States Constitution. R. 10-11, 14, 92; 135-136.

Under grounds 4 and 5 of the motion to quash (R. 11), demurrer (R. 15), motion for peremptory instruction (R. 93), and motion for directed verdict (R. 136-137), appellant attacked the statute as being unconstitutional because, on its face and as construed and applied, it was and is vague, indefinite, too general, a dragnet and permitted speculation, all of which violated section 1 of the Fourteenth Amendment to the United States Constitution. R. 11, 15, 93, 136-137.

SUPREME COURT OF MISSISSIPPI PROCEEDINGS

In the Supreme Court of Mississippi under assignments of error numbers 1, 2, 3, and 4 the appellant complains respectively of the error of the trial court in overruling the motion to quash, the demurrer, the motion for peremptory instruction and the motion for directed verdict. (R. 183-184) Under grounds 9 and 10 of the assignments of error it is claimed specifically that the trial court should have held that the statute on its face and as construed and applied abridged the rights of freedom of speech, press and of worship, contrary to the 1st and 14th Amendments. (R. 187) Under ground 11 of the assignments of error it is claimed specifically that the trial court should have held that the statute was vague, indefinite and a dragnet in violation of the 14th Amendment. R. 187.

The Supreme Court of Mississippi considered each one of the assignments of error above described and numbered

and overruled the same. (R. 140-163) The court held that on its face and by its terms the statute did not abridge the rights of freedom of speech and press contrary to the federal constitution. (R. 144) The court held that as construed and applied that the rights of freedom of speech, and of press were not abridged contrary to the first and fourteenth amendment. (R. 144-156) The court held that freedom of worship of Almighty God was not impaired by the conviction and judgment. R. 156-159.

Thereby the court of last resort in the State of Mississippi sustained the application of the statute to appellant and decided in favor of the validity of the same.

Specification of Errors to be Urged

(1) The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The Supreme Court of Mississippi erred in failing to hold that, as construed and applied to the particular facts and circumstances of the case, the statute in question is unconstitutional because, as so construed and applied, it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

(3) The Supreme Court of Mississippi erred in failing to hold that, on its face and as construed and applied, the statute violates the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellant of liberty without equal protection and due process of law.

(4) The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

(5) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

(6) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

(7) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the state's evidence.

(8) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.

Points for Argument

ONE

The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

A

Freedom of speech historically is guaranteed by the First Amendment and the states are prohibited from abridging the right by the Fourteenth Amendment.

B

Existence of a state of war does not suspend, restrict or narrow the guarantees of freedom of speech contained in the First Amendment.

C

As construed by the highest court of Mississippi the statute is not confined directly to the needs of the police power broadened over peace-time legislation, but deals with matters which at most are only indirectly connected with the war and is therefore in excess of authority.

D

As construed by the highest court of Mississippi the statute is void because it does not require a showing and finding that the language presents a clear and present danger to the war effort, protection of which is the claimed purpose of the statute.

E

There is no evidence that the language complained of constitutes a clear and present danger that any of the evils aimed against by the statute will result, and the undisputed evidence further shows that there was no reasonable tendency of appellant's conduct to cause the results prohibited by the statute.

F

The judicial branch of the government rather than the legislative authority must decide when the liberty of speech must yield to the police power, and in performing this task the courts should make a deeper inquiry than when property rights are involved because presumption of validity of legislative enactments does not overcome guarantees of the First Amendment.

G

The cases discussed show that the rule this court applies does not warrant the abridgment of the right of free speech under the facts and circumstances revealed in this case.

TWO

The statute is unconstitutional as construed and applied because it abridges appellant's right of freedom to worship Almighty God by preaching the gospel of God's Kingdom, contrary to the First and Fourteenth Amendments to the United States Constitution.

A

Freedom to worship Almighty God is guaranteed by the First Amendment and the states are prohibited from abridging this right by the Fourteenth Amendment.

B

Since appellant's method of preaching and the way of worshiping Almighty God is by visiting the people at their homes and discussing the Bible with them, the foregoing freedom to worship is a basic issue in this case and it cannot be judicially declared irrelevant or not involved.

C

No abuse of the exercise of the right of freedom to worship Almighty God is shown by the facts so as to warrant an interference under the statute.

D

Speech and writings which contain opinion relating to interpretation and fulfillment of prophecy, the relation between the Creator and the creature and the duties imposed by conscience should be given the fullest protection possible against interference by statute, so long as there is no clear and present danger of open violence, or a violation of the laws of property or morality.

E

There is no evidence that the activity of the appellant in preaching the gospel constituted a clear and present danger that any of the things aimed against by the statute will result.

F

The oldest cases in point, recorded by the Eternal Judge in the volume of His Word, show that the words spoken and printed, here drawn in question, are proper and right and are entitled to protection because this is a Christian nation binding itself to the recognition of the supremacy of the Law of Almighty God as expressed in the Bible.

G

Many recent holdings of the courts sustain the right of appellant to distribute literature and to speak the words complained of under the guarantee of freedom to worship Almighty God.

THREE

The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of the press contrary to the First and Fourteenth Amendments to the United States Constitution.

A

The broadest possible latitude in criticism and comment on world events, national affairs, state and national governments and public officials, was intended by the framers of the First Amendment to be guaranteed to the press, in times of war as well as in times of peace.

B

The publications in question related to a matter of fair comment on present-day world events and course of action taken against Jehovah's witnesses in which the public had an interest.

C

The publications in question contained only statements made by Jehovah's witnesses as an official explanation of their attitude toward the national flag and governments of this world in defense of the charges made against them and misunderstandings resulting from false reports concerning their loyalty.

D

There is no evidence that the writings complained of constitute a clear and present danger that any of the things aimed against by the statute will result, nor 'reasonably tend' toward such result.

E

The distributor of the literature and the publisher are equally protected against application of the statute to their activity because distribution as well as publication or printing is protected.

F

As construed and applied, the statute absolutely prohibits exercise of the right of freedom of the press previously condemned by this court.

G

The cases involving publications show that the rule applied by this court does not allow abridgment of the right of freedom of the press in the circumstances shown in this case.

FOUR

The statute is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, permits speculation and amounts to a dragnet in the manner construed by the Supreme Court of Mississippi so as to violate the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

FIVE

The general verdict rendered against appellant will not support a conviction where the undisputed evidence shows that either ground of conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.

ARGUMENT

ONE

The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

A

Freedom of speech historically is guaranteed by the First Amendment and the states are prohibited from abridging the right by the Fourteenth Amendment.

It is noticed that the First Amendment in securing freedom of speech did not undertake to *give* that right to the people. It recognized the right named as something known, understood and *existing* at the time. The amendment forbids any law of Congress that shall abridge the right. The 1st and 14th amendments therefore sought to protect and perpetuate the right. The framers intended that it shall remain inviolate. The guarantee of freedom of speech is not mere declaration of policy of the state to be changed with every party in power but it limits legislative and executive action.

The Federal Constitution as originally drafted contained no guaranty of the fundamental freedom of speech.

When the Constitution as proposed was submitted to the various states for ratification the citizens showed much dissatisfaction and in the various state conventions the failure of the writers of the document submitted to provide for a guarantee of free speech, free press and freedom of worship was severely condemned. In fact some states refused to adopt the constitution until given definite assurance that a guarantee would be included in the document. The states that did not have the guarantee in their own constitutions immediately drafted and adopted the same for their own compact. The protest was so great that when Congress met for its first session immediately the Bill of Rights to the Federal Constitution was proposed for adoption and became a part of the Constitution of the United States on December 15, 1791.

This court has recently held that it was the intention of the writers of the Bill of Rights to declare that freedom of speech in the United States was much greater and broader than that enjoyed in Great Britain, and to allow the broadest scope that could be countenanced in an orderly society. *Bridges* v. *California,* 314 U. S. 52.

Throughout history the American people have felt perfectly free to criticize their leaders and the government whenever, and to whatever extent, they have felt they had just ground for finding fault. History has proved that this immemorial right of dissident Americans to air their real or supposed grievances has never yet kept them from being loyal and faithful citizens of the republic. There were severe critics among General Washington's followers, both before and after he became president, but they followed him none the less faithfully, even though exercising their rights of criticism.

It was then recognized and has ever since been recognized that the sovereign power of the republic at all times remained with *the people.* They are the fountain of all law and authority. The delegated authority of the state and

national governments is limited by their respective constitutions. The people being entirely sovereign are not dependent upon the state to grant, allow or suffer the exercise of freedom of speech guaranteed by the constitution and which existed prior to the adoption of the constitution and which right the people of the United States have never surrendered to either state or national governments. This right was equally granted to and held by the minorities as well as the majority party or the party in power.

In *McCulloch* v. *Maryland,* 4 Wheat. 316, Mr. Chief Justice Marshall said: "The government of the Union [state and federal], then (whatever may be the influence of this fact on the case), is emphatically and truly a government of the people. In form and in substance it emanates from them, its powers are granted by them, and are to be exercised directly on them, and for their benefit."

It is therefore among the fundamental principles of the government that the people frame the constitutions of the states and national government. By the same token they reserve to themselves the power to amend it from time to time, as the public sentiment may change. Section 6 of Article 3 of the Mississippi Constitution provides: "The people of this state have the inherent, sole, and exclusive right to regulate the internal government and police thereof, and to alter and abolish their constitution and form of government whenever they deem it necessary to their safety and happiness; provided such change be not repugnant to the constitution of the United States."

Since it is plain that the people can change the form of government it is also manifest that no law which directly or indirectly burdens, abridges or curtails the exercise of free speech in the criticism of government short of open violence can be punished by law.

During the administration of President Adams, when the fabric of government was still new and untried the Sedition Law was passed by Congress. Then many men

seemed to think that the breadth of heated party discussions and criticisms of government might tumble the administration about their heads. The law* made it a crime, punishable with fine and imprisonment, for any person to conspire together or counsel, advise, or attempt to procure insurrection, unlawful assembly, or write any false and malicious writings against the government of the United States, or either house of Congress, or the President, with intent to defame them, etc., or to stir up sedition, or to excite any unlawful combination for opposing or resisting any law, or encourage, or abet any hostile designs of foreign nations against the United States. Prosecutions were had under this law but the effect was to excite a violent public clamor throughout the country. They were held up to the people as attempts to stifle constitutional discussion, and to prolong the office of the party in power, by holding the threat of punishment over the heads of those who would vigorously assail its conduct, measures, and purposes. The public opposition was great and the law had a direct tendency to produce the very state of things it sought to repress; the prosecutions under it were instrumental, among other things, in the final overthrow and destruction of the party adopting it. The law was promptly repealed with the change of party in power and was never re-enacted thereafter.**

This law was enforced with great severity, partiality and dishonesty. This law and its enforcement led to the impeachment of one of the federal judges but not his conviction. The defeat and extinction of the Federalist party resulted from it.

Judge Cooley in his *Constitutional Limitations* (8th Ed.) describing the effect of these prosecutions says: "The dangerous character of such prosecutions would be more glaring if aimed at those classes who, not being admitted to a share in the government, attacked the constitution in

*Act of July 14, 1798.
**Wharton's State Trials.

the point which excluded them. Sharp criticism, ridicule, and the exhibition of such feeling as a sense of injustice engenders, are to be expected from any discussion in these cases; but when the very classes who have established the exclusion as proper and reasonable are to try as judges and jurors the assaults made upon it, they will be very likely to enter upon the examination with a preconceived notion that such assaults upon their reasonable regulations must necessarily be unreasonable. If any such principle of repression should ever be recognized in the common law of America, it might reasonably be anticipated that in times of high party excitement it would lead to prosecutions by the party in power, to bolster up wrongs and sustain abuses and oppressions by crushing adverse criticism and discussion. The evil, indeed, could not be of long continuance; for, judging from experience, the reaction would be speedy, thorough, and effectual; but it would be no less serious evil while it lasted, the direct tendency of which would be to excite discontent and to breed a rebellious spirit. Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented, when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness. They must be left at liberty to speak with freedom which the magnitude of the supposed wrongs appears in their minds to demand; and if they exceed all the proper bounds of moderation, the consolation must be, that the evil likely to spring from the violent discussion will probably be less, and its correction by public sentiment more speedy, than if the terrors of the law were brought to bear to prevent discussion." [p. 901]

B

Existence of state of war does not suspend, restrict or narrow the guarantees of freedom of speech contained in the First Amendment.

There is a widespread tendency to regard civil liberties, freedoms of speech, press and worship, in times of war as a dispensable and harmful luxury. This popular feeling finds no support in the law or constitution and probably arises from the fact that so many hundreds of persons were prosecuted for utterance of speech and circulation of literature during the first World War, which prosecutions came very near destroying the Bill of Rights. The theory of putting away civil liberties in "storage" until the end of the war and then extracting them after the "emergency" is based on several fallacies. If there has ever been a time in history when it is of supreme importance for democratic countries to maintain those two foundation stones of free society, political and civil liberty, that time is now. The nation could win the war militarily and yet lose it in a more permanent sense if the cost of victory is the surrender of the freedoms for which the nation claims to be fighting. Some Americans who are sincere liberals in times of peace lose their balance and perspective in time of war. They are so obsessed with the *scare-crow* of sedition that they quickly impute unworthy and criminal motives to those who disagree with them about proper methods of prosecuting the war and the political and economic objectives of the government. In this they lose sight completely of the long-range importance of maintaining the maximum degree of freedom of expression, if only as an antidote to the extremely powerful regimenting tendencies of the war itself. The rapidity with which events are sweeping the nation toward unknown forms of organization, national and international, provides one of the strongest arguments for resolutely maintaining,

whatever may be the external stress, those two most valuable elements in the heritage of a free people.

When "the state" becomes concerned over what seems to be unwise or injurious exercise of the right of free speech it is worth while to look back to the Civil War and recall how much expression of opposition sentiment was tolerated and proved compatible with the prosecution of the conflict to a successful end. Regardless of how grave some aspects of the military situation have been or now are, no one with a reasonable sense of judgment, vision, mercy and logic could regard it as comparable with the permanent crisis of 1861-1865, when Washington, D. C., was never far from the line of the battle front. The places where severe emergency measures were applied by the military authorities were in regions where there was actual or incipient civil strife and in combat areas. At the Democratic Convention during that war men used language about Lincoln which exceeded in violence anything found in the World War I Espionage cases. He was referred to by one speaker as an old monster who wanted more victims for his slaughter pens. Although this was not calculated to encourage recruiting and was made publicly there is no record that any prosecution was instituted against the vehement orator. In *Ex parte Milligan*, 2 Wall. 2, 120, Mr. Justice Davis said: "Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world has taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious conse-

quences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

In the *war between the states* freedom of press and of speech in the *North* was only disturbed three times and this by the military in combat zones, which was overruled by President Lincoln in two instances and once by this court.

In the Confederacy during the *civil war* the proceedings of the Congress were secret, and the press was held under military administration. These contrasting methods were as important in bringing about the ensuing result as the actions of the armies in the field.

Moreover, it should be noted that repressive legislative measures against the people's liberties have very little to do with maintenance of national morale. There were many such measures in France and many more arrests in France than in England after the beginning of hostilities. But when the test came France fell and England stood. The application of such repressive measures has no direct or indirect relation to the prosecution of military activities, but hamper it by causing national disunity of the peoples on the home front. The present day attitude toward suspension of civil liberties during war time is well expressed in *Wilson* v. *Russell*, 146 Fla. 539, 1 So. 2d 569, thus:

"These several arguments offered in behalf of the challenged ordinances are weighty and if presented to a legislative body could not only be influential but convincing, or if made on the hustings, would be approved and applauded by the people, but a court in the discharge of duty under our system is required to be oblivious to public clamor, partisan demands, notoriety, or personal popularity and to interpret the law fearlessly and impartially so as to promote justice, inspire confidence and serve the public welfare."

Judge Alexander said: "I see no reason, however, to justify a sacrifice of the freedom of speech by war when war is itself justified as a price for its maintenance. . . . It

may be that often *inter arma silent leges,* but courts have never recognized that in time of war the citizen must remain silent nor conscience inarticulate." R. 171-172.

"War is an emergency chiefly because our liberties are at stake. There is neither logic nor law to support the view that these liberties must be surrendered in order to be saved." (R. 173) "War does not restrict fundamental freedoms but rather enlarges the legislative field by bringing into play new laws designed to preserve the integrity of the war effort and to protect the functioning of our army and navy. But in the end the principle remains the same. Mere opinions even though beneath contempt are nevertheless above the law." R. 174-175.

The Office of War Information, Washington, D. C., in its pamphlet "The United Nations fight for the FOUR FREEDOMS" is deserving of quotation here. The pamphlet begins with a quotation from Franklin D. Roosevelt: "The four freedoms of common humanity are as much elements of man's needs as air and sunlight, bread and salt. Deprive him of all these freedoms and he dies—deprive him of a part of them and a part of him withers. Give them to him in full and abundant measure and he will cross the threshold of a new age, the greatest age of man." Under "Freedom of Speech" the pamphlet states: "To live free a man must speak openly; gag him and he becomes either servile or full of cankers. Free government is then the most realistic kind of government, for it not only assumes that a man has something on his mind, but concedes his right to say it. It permits him to talk—not without fear of contradiction, but without fear of punishment.

"There can be no people's rule unless there is talk. Men, it turns out, breathe through their minds as well as through their lungs, and there must be a circulation of ideas as well as of air. Since nothing is likely to be more distasteful to a man than the opinion of someone who disagrees with him, it does the race credit that it has so stubbornly defended

the principle of free speech. But if a man knows anything at all, he knows that that principle is fundamental in self-government, the whole purpose of which is to reflect and affirm the will of the people.

"In America, free speech and a free press were the first things the minds of the people turned to after the fashioning of the Constitution. . . .

"Talk founded the Union, nurtured it, and preserved it. The dissenter, the disbeliever, the crack-pot, the reformer, those who would pull down as well as build up—all are free to have their say.

"Talk is our daily fare—the white-bosomed lecturer regaling the Tuesday Ladies' Club, the prisoner at the bar testifying in his own behalf, the editorial writer complaining of civic abuses, the actor declaiming behind the footlights, the movie star speaking on the screen, the librarian dispensing the accumulated talk of ages, the professor holding forth to his students, the debating society, the meeting of the aldermen, the minister in the pulpit, the traveler in the smoking car, the soap-box orator with his flag and his bundle of epigrams, the opinions of the solemn magistrate and the opinions of the animated mouse—words, ideas, in a never-ending stream, from the enduring wisdom of the great and the good to the puniest thought troubling the feeblest brain. All are listened to, all add up to something and we call it the rule of the people, the people who are free to say the words.

"The United States fights to preserve this heritage, which is the very essence of the Four Freedoms. How, unless there is freedom of speech, can freedom of religion or freedom from want or freedom from fear be realized? The enemies of all liberty flourish and grow strong in the dark of enforced silence."

Mr. Joseph F. Guffey, Senator from Pennsylvania, in his address over the Mutual Broadcasting System 10:00 p. m. Sunday, December 14, 1941, among other things said:

"Traditionally the American people have recognized a distinction between the liberties they enjoy in time of peace and the restrictions they must necessarily expect in time of war.

"This does not mean that the Bill of Rights is to be suspended for the duration of the emergency. Nor does it mean, as some are inclined to assert, that our liberties are only 'qualified' in any event. They are as real today as they have ever been in our history. It is important that we keep them that way. Should we deny their essential validity now, we would deny the very Democracy we are fighting to preserve, for they are in a real sense the foundation of our Democracy. . . .

"To those who incline to the belief that the Bill of Rights should be suspended in wartime, I say that we should all remember that without the Bill of Rights we should not have had a Constitution at all. Our forebears made it a condition precedent to ratification of the Constitution as it was originally proposed. . . .

"In many European nations which have fallen under Axis domination during the past two years severe repressive measures had been taken long before the conquest, in an attempt to stop the tide of propaganda which was part of the 'softening up' process preliminary to armed invasion. These measures, drastic as many of them were, failed to halt the Fifth Column. In one sense they were an attempt to combat one dictatorship with another, with the inevitable result that the people, seeing their liberties disappear by governmental edict, saw little reason to fight for a freedom which was already gone. In this Nation our defense against the Fifth Column has not been legislative.

" . . . In fact, I conceive the real danger to our Bill of Rights in war time to be not legislative enactments but rather the misdirected patriotism of individuals and groups who may be inclined to brook no criticism of our endeavors. In the prosecution of this war we enjoy an advantage which

no dictator nation can match, the advantage of expression of the public will, of criticism where it is needed . . .

"I say that now, in the midst of war, is the time for us to proclaim our Bill of Rights as the great charter of freedom which we are fighting to preserve. Let it stand forth as a shining light to those nations engulfed in darkness, as a beacon in the storm, so that all who labor beneath the yoke of dictatorship may look up and take heart."

Francis Biddle, Attorney General of the United States has declared the policy of the Department of Justice thus: "It seems to me that the most important job an Attorney General can do in a time of emergency is to protect civil liberties.

"In tense times such as these a strange psychology grips us. We are oppressed and fearful and apprehensive. If we can't get at the immediate cause of our difficulties we are likely to vent our dammed-up energy on a scapegoat. That scapegoat may be some one whose views are contrary to our own, it may be some one who speaks with a foreign accent, or it may be a labor union, which stands up for what it believes to be its rights. . . .

"In so far as I can by the use of the authority and the influence of my office, I intend to see that civil liberties in this country are protected; that we do not again fall into the disgraceful hysteria of witch hunts, strikebreakings and minority persecutions which were such a dark chapter in our record of the last World War." (The New York *Times* Magazine, September 21, 1941.)

Mr. Justice Murphy, when Attorney General, on October 13, 1939, in his public address entitled "The Test of Patriotism" among other things said: "But in our zeal to protect ourselves from internal aggression, we must be on guard that we ourselves are not guilty of aggression against the civil liberties of our citizens. We must not fall victim to the infection of despotism that in recent years has been

sweeping the world. For if we suppress civil liberty, we suppress democracy itself."

It is plain that the United States Government through the Department of Justice is doing its utmost to keep the enforcement of the war laws within their proper orbit and is allowing the greatest liberality to the exercise by all of civil liberties and not to repeat the tragedy of 1917-1918. For detailed information of hysteria prosecutions during the last war see "Free Speech in the United States" (Chafee) where it is said that "to advocate heavier taxation instead of bond issues; to state that conscription was unconstitutional, although the Supreme Court had not yet held it valid; to say that sinking of merchant vessels was legal; to urge that a referendum should have preceded our declaration of war; to say that war was contrary to the teachings of Christ", was found to be criminal by judges and juries.

The Attorney General of the United States has requested the various states to leave the matter of espionage, sedition, etc., prosecutions to be handled by the Department of Justice so as to insure uniformity of treatment. In most states hysteria has disappeared by following this advice. At Indianapolis, Indiana, on September 30, 1941, before the National Association of Attorneys General, Mr. Biddle said: "Registration control of aliens was, by unanimous consent, left with the Federal government. Matters of espionage, by common consent, have been left with the Federal government, where it belongs."

The national government is responsible for the prosecution of the war effort and therefore administration of any penal laws which are war laws should be confined to the policy of the Department of Justice, where there is a uniform declaration of policy. Divergent policies of the various states on such matters can well impede the war effort by creating disunity through suppression of the Bill of Rights. If the various states cannot willingly conform to the policies on the same subject fixed by the Department of Justice,

then it is the *duty of this court* on appeals of this sort to take *control* over the *state war legislation* subject matter so as to make it uniform. The reason why national interest justifies uniform control over the subject matter of war legislation is not hard to discern. If the legislation is justified only by the war created by the federal government by declaration of war, then the policy of the state should conform to the policy of the federal government. It is plain that when local interests are involved that the local law-making and law-enforcing bodies will deal with decent respect for the interest of those affected. But when non-local or minority interests are involved the temptation is to promote the local welfare at the expense of the minorities. In that event there is the inevitable tendency toward disunity. This doctrine has been applied in the field of business regulation; the commerce clause and intergovernmental tax immunity have expounded it. (*McCulloch* v. *Maryland*, 4 Wheat. 316, 435-436; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 184; *Helvering* v. *Gerhardt*, 304 U. S. 405, 412, 416) Mr. Louis Lusky in his article "Minority Rights and the Public Interest"* says: "Our remarkably unanimous support of the present war is based in large degree on the general feeling that we are fighting to preserve the principle of 'free' government. The importance of this feeling, which is basic to our morale, can hardly be overestimated. Under such circumstances there is a danger in anything which creates doubts as to whether our own government is essentially different from those against which we are fighting. . . .

"The justification for Federal intervention in the field is therefore clear. There is a national interest not only in preserving a form of government in which men can control their own destinies, but in enabling the common man to see its advantages and know its feasibility. It is an interest in quelling doubts as to the practical efficacy of our system

* Yale Law Journal, Volume 52, Number 1, December 1942.

to accomplish essential justice. It is an interest in preventing deviations from our national ideal, even in local government, because deviations create such doubts. In short, it is an interest in making a belief in our system a part of the American creed."

William H. Chamberlin* says:

"The fight for civil liberties must be waged continuously, courageously, and consistently or it will be lost. For the capacity to appreciate, even to exercise these liberties might easily be atrophied in the event of a long suspension under the double pressure of bureaucratic encroachment and mass intolerance. What is even more appalling in the totalitarian society than the absence of liberty is the ever-growing lack of consciousness that there was such a thing as liberty to lose."

"If, in one way or another, we should lose these liberties —the right to speak and write freely and critically, the right to organize politically and industrially without state control, the right to speedy and impartial justice—then our way of life would have been defeated and we should have fallen before the totalitarian wave, even though our banners might some day wave triumphantly in Tokyo and Berlin."

C

The publications in question contained only statements made by Jehovah's witnesses as an official explanation of their attitude toward the national flag and governments of this world in defense of the charges made against them and misunderstandings resulting from false reports concerning their loyalty.

Appellant was not indicted, prosecuted nor convicted because he "advocated the cause of the enemies". The evi-

*"Why Civil Liberties Now," *Harpers Magazine*, October 1942.

dence wholly fails to show that he advocated the cause of the enemies in the war; therefore this court does not have to determine whether or not on its face and as applied that part of the statute violates the constitution. Appellant was convicted because the language used is alleged to be "designed and calculated to encourage" "disloyalty to the government" and "reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government".

It should be kept in mind what the court must here consider is this law within the police war powers of the state broadened by the state of war. The court below admits that the law is unconstitutional as peace-time legislation but sustains it as a war measure. The problem for this court to decide is the particular parts of the statute under which the appellant was prosecuted within the "war powers" of the state of Mississippi. We say that the statute in these respects and provisions is invalid because "loyalty" and "saluting a flag" are not peculiarly associated with the war effort, but are peace-time elements as well. Furthermore since the court below has construed the statute broadly so as to cover the entire field of loyalty and not limit it to the war effort it is void.

Mr. Chief Justice Smith of the court below, dissenting, said: "This power exists only when the nation is at war and is to enact legislation in aid of the prosecution of the war or to prevent the obstruction of its successful prosecution. Article I, Section 8, Clause 11, Section 10 of our National Constitution. Gilbert v. Minn., 245 U. S. 325. . . . The disloyalty to the State or Nation condemned in this statute is not limited therein to such as may adversely affect the prosecution of this war but covers all such disloyalty whether it affects the prosecution of the war or not, and therefore is in excess of the State's war power." R. 176-177.

Judge Alexander of the court below, dissenting, says

that the statute is limited in the same manner as is the Espionage Act. He adopts the language of Bishop's Criminal Law (9th Ed.), Vol. 1, p. 326, where it is stated: "The purpose of the espionage act passed by Congress on June 15th, 1917, was not to suppress criticism or denunciation, truth or slander, oratory or gossip, argument or loose talk but only falsehoods wilfully put forward as true with intent to interfere with army and navy operations. Remote and secondary results not intended by the defendant, arising from a fair and truthful discussion of matters of public concern do not fall within its purview." R. 172.

There is no law requiring the salute to the flag in any fashion in the state. The statute allowing the salute ceremony in the schools is peace-time legislation regulating the conduct of the schools and does not affect the war efforts or men in the army or persons subject to the Selective Training and Service Act. There is no statute which says that the refusal to salute the flag is an act of disrespect or disloyalty. There is no showing that refusal to salute for reasons of conscience affects the war effort directly or indirectly. There is no finding that the "salute" of the flag will contribute to the success of the war effort.

A rule of conduct which compels individuals to manifest beliefs and emotions in a specified manner, as the compulsory salute, is an attempt to control and direct the inner thoughts of a man which cannot be done by law. Loyalty cannot be made by law. Loyalty cannot be created by legislation. There are many different ways of showing loyalty. One may prefer to participate in a ceremony, while another may prefer to show his loyalty in another way, such as obeying the laws of the land and honestly performing his duties to God and State. Ceremonies are necessarily an individual thing. What may please the mind and conscience of one may not please that of another. The ceremony of one religion may be abhorrent to that of another religion and no one would think for a moment that the ceremony of one

could be forced on another by law. The same principle applies to loyalty ceremonies.

It is true that in the Army and Navy strict regimentation is necessary and certain rules and regulations can be prescribed by the commanders of the military forces prescribing the conduct of the members of the armed forces which could not be constitutionally prescribed against the civilian population. There may be said to be a plain and necessary need for strict discipline and regimentation in the military forces so as to have an effective army and navy. Such justifications of regimenting those in the armed forces does not allow similar measures against the civilian population.

Loyalty is necessarily a general term of varying definitions. It is a condition which applies to different facts and circumstances. It is not a proper subject of legislation because loyalty must come from within and cannot be proved and established by outward ceremonies which have no direct relation to the state.

In the court below Judge Alexander said: "It will be found that the cases invoked to sustain the controlling view on this point deal chiefly with acts or advocacy which violates existing law, or which undermines the discipline or efficacy of our armed forces or the functioning of our military machine". R. 172.

The limitation upon the state in enactment of laws abridging freedom of speech is well stated by Mr. Justice Roberts in *Herndon* v. *Lowry,* 301 U. S. 242, thus: "The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principle of the Constitution."

To say that one who does not agree one hundred per cent with the political, domestic and war policies of the nation is disloyal and not entitled to voice his opinions is tantamount to destroying the heritage of the American citizen and right of all to advocate for a change in the government or abolition of the Constitution by peaceful and lawful means. It at once means the end of liberty of speech.

It is apparent that as to the provisions relating to the "attitude of stubborn refusal to salute the flag" and "disloyalty" the statute is void because there is no rational connection between the safety of the state in times of war and the means employed. See Freund, *Police Power*, p. 497; also at page 133, where it is said:

"The questions which present themselves in the examination of a safety or health measure are: does a danger exist? is it of sufficient magnitude? does it concern the public? does the proposed measure tend to remove it? is the restraint or requirement in proportion to the danger? does the choice of a particular measure show that some other interest than safety or health was the actual motive of legislation?" [section 143]

The Mississippi Supreme Court did not give consideration to any of these requirements and applied the presumption that the enactment is valid and refused to go behind it to determine its invalidity. The court says: "The legislature knew the local conditions—that we have two races about equal in numbers in this state, and that under the stress of the times agitation and subversive influence should not be abroad among the people. The legislature is the judge of conditions justifying such legislation unless it is clearly apparent to the Court that the assumption is unfounded." (R. 155) It is manifest that the fact that there are two races in Mississippi about equally divided has no more connection and weight than the fact that there are several scores of nationalities living together in peace in New York City. It is noticed that the Supreme Court of Mississippi fails to

apply the rule applied by this court that where the freedom guaranteed by the First Amendment is involved there is a presumption of invalidity, or at least the burden is upon the advocates of the measure to prove its constitutionality as applied which has not been discharged by the state here. We have more to say of this later when we reach the discussion as to extent of inquiry to be made by this court concerning the problems here presented.

We submit therefore that since it is manifest that any benefits flowing from the questioned provisions of the statute are only indirect in relation to the war effort and the injuries flowing from the suppression and repression of freedom of speech by an application of the statute are so great and broadly destructive that any benefit, which is only imaginary and doubtful, flowing from the enforcement of the statute is counterbalanced by the social advantages of free speech and open criticism. These considerations require that the legislation be delared unconstitutional.

D

As construed by the highest court of Mississippi the statute is void because it does not require a showing and finding that the language presents a clear and present danger to the war effort, protection of which is the claimed purpose of the statute.

As hereinbefore discussed it is manifest that the writers of the Constitution intended to give a higher degree of "free speech" than was enjoyed by the people in Great Britain at the time of the adoption of the First Amendment. The ancient "reasonable tendency", "designed and calculated" and other Eighteenth Century doctrines applied under the old common law which permitted indictments and prosecutions for "libels against the government" were not shaken off immediately with the adoption of the amendment but clung on as barnacles to the "constitutional ship" until

definitely rejected by this court in *Schenck* v. *United States,* 249 U. S. 47, 52, where Mr. Justice Holmes said: "The question in every case is whether words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

In the Supreme Court of Mississippi it was clearly argued that this requirement of "clear and present danger" must be read into the statute in order to meet the requirements of the decisions of this court. This contention was definitely rejected by the court below. The court said: "The Mississippi statute does not do that. [Require clear and present danger.] That was not necessary to its validity." R. 159.

In the circumstances the statute must be judged on its face. With reference to the parts of the statute under which appellant was convicted, 'disloyalty' and 'refusal to salute flag' provisions, all that is required for a conviction is "designed and calculated" and "which reasonably tends". Both of these terms are terms from the old common law days prior to the American Revolution and the adoption of the First Amendment. In *Bridges* v. *California,* 314 U. S. 252, in discussing the question, it was said: "Nevertheless, the 'clear and present danger' language of the *Schenck* case has afforded practical guidance in a great variety of cases in which the scope of constitutional protections of freedom of expression was in issue. It has been utilized by either a majority or minority of this Court in passing upon the constitutionality of convictions under espionage acts, Schenck v. United States, supra, Abrams v. United States, 250 U. S. 616; under a criminal syndicalism act, Whitney v. California, supra; under an 'anti-insurrection' act, Herndon v. Lowy, supra; and for breach of the peace at common law, Cantwell v. Connecticut, supra. And very recently we have also suggested that 'clear and present danger' is an appropriate guide in determining the constitutionality of restric-

tions upon expression where the substantive evil sought to be prevented by the restriction is 'destruction of life or property, or invasion of the right of privacy.' Thornhill v. Alabama, 310 U. S. 88, 105.

"Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be 'substantial', Brandeis, J., concurring in Whitney v. California, supra, 374; it must be 'serious', id. 376. And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression. Schneider v. State, 308 U. S. 141, 161.

"What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished. Those cases do not purport to mark the furthermost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights. For the First Amendment does not speak equivocally. It prohibits 'any law abridging the freedom of speech or of the press'. It must be taken as a command of the broadest scope that explicit language, read into the context of a liberty-loving society, will allow. . . .

"In accordance with what we have said on the 'clear and present danger' cases, neither 'inherent tendency' nor 'reasonable tendency' is enough to justify a restriction of free expression. But even if they were appropriate measures, we should find exaggeration in the use of those phrases to describe the facts here."

If this court were to approve the *reasonable tendency* doctrine as applied to this statute, great injustice and further abridgment of speech would result. Such a doctrine permits the state to go outside its proper field of acts,

present or probable, into the field of ideas and opinion, and possible consequences and imagined results based upon contingencies which may never happen, as a justification for the condemnation of speech. It would allow the condemnation of speech by judge or jury concerning a doctrine which they disliked because they thought it is likely to cause harm some day in the future. Thus they justify their wrongful acts in pyramiding one fallacious argument upon sophistry and upon imagined dangers and immediately conclude that it had better be nipped in the bud.

The clear and present danger rule permits the doctrine, dogma, creed, theory and principle to be proved or disproved by argument in the course of events. It avoids the risk of suppressing disagreeable truths so long as there is no imminent danger of the unlawful acts which can be prohibited by statute. By applying and maintaining this principle only can the nation survive as a democracy with freedom of speech for all. The very best way to increase discontent among the people—disorder, distrust and hatred —is to convict and impose severe sentences upon innocent followers of Jesus Christ under the general statute of Mississippi. The clash of ideas is to be welcomed, not feared, even if it casually involves the permission of one to speak matters exceedingly distasteful to the vast majority of the people. Freedom of thought and speech does not mean freedom for those who agree with us but freedom for those whose message we despise and thoroughly disagree with.

In *Thornhill* v. *Alabama,* 310 U. S. 88, Mr. Justice Murphy held for this court that a statute of this sort must be judged on its face. There he said: "The section in question must be judged upon its face.

"The finding against petitioner was a general one. It did not specify the testimony upon which it rested. The charges were framed in the words of the statute and so must be given a like construction. The courts below expressed no intention of narrowing the construction put upon the statute

by prior State decisions. In these circumstances, there is no occasion to go behind the face of the statute or of the complaint for the purpose of determining whether the evidence, together with the permissible inferences to be drawn from it, could ever support a conviction founded upon different and more precise charges." "Conviction upon a charge not made would be a sheer denial of due process." *De Jonge* v. *Oregon,* 299 U. S. 353, 362; *Stromberg* v. *California,* 283 U. S. 359, 367-368.

The dangers to constitutional liberties by applying the *reasonable tendency* rule instead of the *clear and present danger* is further discussed by this court in the case of *Herndon* v. *Lowry,* supra.

We submit, therefore, that the statute on its face, by its terms and as construed by the highest court of Mississippi permits unconstitutional abridgments of freedom of speech because not requiring the application of the clear and present danger test.

E

There is no evidence that the language complained of constitutes a clear and present danger that any of the evils aimed against by the statute will result, and the undisputed evidence further shows that there was no reasonable tendency of appellant's conduct to cause the results prohibited by the statute.

It may be argued by some that it is not the province of this court to inquire into the evidence. This argument is answered at the threshold to our discussion under this point. When it is argued that the evidence shows that a substantial federal question is involved and that a right secured by the constitution has been denied appellant it is the duty of the court to inquire into the evidence, especially when the question of law is mixed with a question of fact. Reference is made to *Sterling* v. *Constantin,* 287 U. S. 378, 398, where this court said: "When there is a substantial

showing that the exertion of state power has overridden private rights secured by that constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against individuals charged with the transgression. . . . Accordingly, it has been decided in a great variety of circumstances that when questions of law and fact are so intermingled as to make it necessary, in order to pass upon the federal question, the court may, and should, analyze the facts. Even when the case comes to this court from the state court this duty must be performed as a necessary incident to a decision upon the claim of denial of federal right." See also *Fiske* v. *Kansas,* 274 U. S. 380, 385, 386.

The statement of facts pages 7 to 13, inclusive, supra, is adopted by reference as a part of this argument.

The circumstances surrounding the occasions that these statements were made should be considered. The motives, interests and declared intentions of the state's witnesses should not be ignored in determining whether there existed a clear and present danger. These witnesses were not acting in good faith with appellant when he visited at their home. They acted as spies and informants for the American Legion and the prosecuting attorney, who had advised these women that appellant and his wife were criminals engaged in subversive activities in the community. They were not interested in what appellant was preaching except to draw something out of him so that he might be trapped for the District Attorney. As a matter of fact the taking of the literature by each woman was not that they might read it and learn what was taught by appellant but that they might turn it over to the prosecuting attorney and Legionnaires as evidence to be used in this prosecution. These circumstances recall forcefully to mind the account recorded in Luke, chapter 20, verses 19-23, concerning Jesus thus: "And the chief priests and the scribes the same hour sought to lay hands on him; and they feared the people: for they

perceived that he had spoken this parable against them. And they watched him, and sent forth spies, which should feign themselves just men, that they might take hold of his words, that so they might deliver him unto the power and authority of the governor. And they asked him, saying, Master, we know that thou sayest and teachest rightly, neither acceptest thou the person of any, but teachest the way of God truly: Is it lawful for us to give tribute unto Caesar, or no? But he perceived their craftiness, and said unto them, Why tempt ye me?"

It is noticeable that none of the women who testified against appellant could remember any other specific statement as made by appellant except the precise words charged in the indictment, although the appellant talked to them for more than an hour and a half on Bible prophecies. Since the women could not remember clearly the other parts of the conversation, the only way the court can consider the entire context of the conversation to determine the true circumstances under which the objectionable words were claimed to have been spoken, is to consider the testimony of appellant. With respect to the parts not touched upon by the women the testimony of the appellant must be taken as true because not contradicted.

The complaining witnesses feigned interest in the comforting message of the scriptures with reference to the hope of the dead, their sons who had lost their lives at Pearl Harbor. They were zealous in an effort to aid the state in tracking down fifth columnists, subverters, saboteurs, and other enemies of the nation. Appellant had been identified to them as a *'foe'* when they received him into their homes. Their imagination and zeal greatly fired by representations made by the prosecuting attorney intensified their reaction against appellant. The things they were looking for caused them to hang onto any word or statement which could be misconstrued in favor of the prosecution and manifestly even led them to false statement.

No person would have the hardihood and audacity to contend that the appellant visited in the home of these women to create disloyalty or to subvert the war effort. He was there for the purpose of preaching God's kingdom as the only hope for the suffering of humanity. Since two of the women had lost their loved ones he showed the hope that the Scriptures held out for the women actually to see their loved ones resurrected and brought back to live upon the earth under God's government of righteousness.

In the course of the conversation appellant turned to an explanation of the oppression and hardships upon the people of the world at the present time. In showing that these conditions were foretold to come to pass in these modern days as a circumstance and proof of the need and nearness of such kingdom, he referred to the prophetic book of Revelation, the seventeenth chapter. He went into a detailed explanation of the "scarlet-coloured beast, full of names of blasphemy, having seven heads and ten horns" with its female rider as picturing Totalitarian Rule. Appellant said that he mentioned that Hitler was the leading example and proponent of totalitarianism in the earth. From the Scriptures it was pointed out by appellant to the women that the prophecies were being rapidly fulfilled by the coming to pass of present-day world events known to all. A more detailed consideration of the prophecy of Revelation, 17th chapter, is found in the booklet *Peace—Can It Last?* which is printed in the record in *Jamison* v. *Texas*, No. 558 October Term 1942 (decided March 8, 1943, by this Court), to which reference is here made. This booklet shows that there is nothing in the doctrines of the Bible as revealed in Revelation 17th chapter which even remotely affects the war effort. It clearly pictures postwar conditions under the *New Order* which is proposed for mankind.

It is then very plain that there is nothing said with the intention of frustrating the war effort of the nation or which would create disloyalty to the war effort. Appellant

emphatically denied making the statement that it was wrong for the President of the United States to send an army overseas to fight. The statements at the most were only expression of opinion and did not advocate disloyalty to the government or directly affect the war effort. Such statements are not nearly as disloyal and subversive as some of the editorials and news comments of the leading and largest newspapers of the nation nor the public expressions of certain congressmen and senators on the same subject.

While there was little, if any, "second front" agitation at the time of the statements it is a thing of common knowledge that for months before the second front was opened in Africa there was a constant battle of words in the public press, in news items, statements of public officials, swivel-chair "newspaper typewriter" generals, editors and others as to advisibility of opening a second front and whether or not it was or was not a sound move. Many conflicting opinions were expressed. Many critical opinions of the *second front* were voiced. The nation is at war, says the controlling opinion below! But does this mean that in times of war the conduct of the commander in chief, the generals, and other officials becomes immune from criticism and comment, except favorable comment, as it is today in Germany, Italy and such places? By declaring war on the Axis powers the United States did not surrender the "four freedoms" which it claims to be fighting to preserve. It has historically been the prerogative of the American people to criticize and advocate peaceably for a change in policies, even in times of war. If this right did not exist and could not be practiced, the smoldering discontent would explode into violence and revolution. Any well-balanced and well-informed person knows that public discussion of policies is a public necessity. That free speech is not exercised for the sole benefit of the speaker but that the public have an equal right to hear, which is also protected by the Constitution. Throughout

history the American people have felt perfectly free to criticize their leaders whenever, and to whatever extent, they have felt they had just ground for finding and pointing out faults, *in the public interest*. This right and practice has not kept them from giving loyal and sacrificial service to the republic. There were grumblers among the most devoted of General Washington's followers, but they followed him none the less faithfully on that account. As it was then, so also it is now.

In connection with these statements above mentioned there should be considered, together with appellant's denial thereof, the record of appellant in times past. He volunteered during the first world war and was discharged after the war ended. He enlisted later and was in the army up to 1931, when he was honorably discharged. He testified positively that he was neither a conscientious objector nor a pacifist.

Appellant emphatically denies making any statement with reference to the flag. But assuming that he did make the statement, can it be said that such statement in any way affected either directly or indirectly, immediately or remotely, the war effort? None whatsoever. The flag is no more closely connected with the government in time of war than in time of peace. It is an emblem of the government and stands for freedom of speech, press and worship in times of peace as well as in times of war. The duty of the citizen to the flag does not change in times of war. It is the same at all times. The flag, therefore, has no direct connection with the war effort and the statements said to have been made by appellant on the flag cannot present a clear and present danger that the war effort could be affected in any degree.

Concerning all the oral statements alleged to have been made by appellant it should be remembered that the circumstances do not show any danger whatever. They were not made to men in the army. It is not shown that anyone

subject to the Selective Training and Service Act was present and heard any such words. Nor is it shown that the women carried the message on to others except the prosecuting attorney. These women heard it in *private* homes. The circumstance alone shows that there was no clear and present danger. All of the cases relied upon by the state are cases where statements were made in *public* places or in public speeches or in literature distributed to the public. Here there is no claim nor is there any evidence that the appellant was going from house to house making such statements. The unusual circumstances of these two women having lost sons at Pearl Harbor in the sneak attack there and the fact that the women were drawing the appellant out on such statements shows that they were limited to the particular circumstances. It seems plain that before such statements could be considered presenting a clear and present danger there should be some evidence, of which there is none in the record, that appellant was making the statements from house to house. In this regard the state wholly failed to establish a vital element in its proof.

To allow conviction based on statements made incidentally in private conversation of this sort opens wide the door to many innocent persons to be persecuted under a statute of this sort. A court should be reluctant to convict under a statute of this sort where oral words are involved unless it can be absolutely certain that there was an intent to violate the statute and that the actual words were uttered. The evidence should be examined with close scrutiny therefore to determine the fact. Under the statute and record in this case the conviction depends on the reaction, memory, prejudices, understanding and comprehension of witnesses for the state who admitted that they were moved by prejudice, jealousy and fear of prosecution themselves by the County Attorney for possession of the literature they had previously received from appellant's wife if they did not "come across" with the goods and aid in prosecuting the appellant.

No reasonable person can be convinced beyond a reasonable doubt that appellant intended to violate the statute or commit any of the evils prohibited by it.

Also in arriving at the conclusion that there is no evidence of clear and present danger the court should consider the admission of every person who heard the oral statements that they did not believe them, were not affected by them. Each woman testified that it did not affect her in any way, did not cause her to have less respect for the flag, did not cause her to have less allegiance to the government. That because of the conversation it caused her to have a higher regard, love and allegiance for the government. It seems plain therefore that as to the oral statements there is absolutely no evidence in proof of any danger whatever flowing from the words of the appellant.

It is manifest that the entire conversation was devoted to an explanation of the Scriptures as they relate to the postwar conditions. On this subject freedom of speech even in this time of war should be allowed in the widest possible manner. Is it necessary that the liberty of speech in the pulpit be curtailed and suppressed? Even in this time of war the Office of Civilian Defense and the Office of War Information are looking to the clergy to aid in discussing the peace aims of the nation. In *The Christian Century*, issue of January 20, 1943, page 79, under article entitled "The President Opens the Door", President Roosevelt is quoted as saying, "We are counting on the leadership of our clergymen to facilitate a program of discussion of the world beyond the war." It certainly is not intended that an ordained minister of Jehovah God should be restricted in describing such times from the standpoint of the Bible.

In arriving at the question of whether or not the matter of clear and present danger is presented in the evidence the court cannot consider the objectionable statements themselves but the court must consider the entire conversation or entire document from which the statements are

taken. Mr. Justice Brandeis in *Schaefer* v. *United States*, 251 U.S. 466, 482, said: "The nature and possible effect of a writing cannot be properly determined by culling here and there a sentence and presenting it separated from the context. In making such determination, it should be read as a whole." See also *United States* v. *One Book Entitled Ulysses*, 72 F. 2d 705; *United States* v. *Dennett*, 39 F. 2d 564; *Dupont Engineering Co.* v. *Nashville Banner Pub. Co.*, 13 F. 2d 186, 189; *Halsey* v. *New York Society*, 234 N.Y. 1, 4; *Moore* v. *Booth*, 216 Mich. 653.

With reference to the contents of the booklets there can be no question but that the evidence shows that they were distributed publicly and from house to house. The appellant admitted that on the witness stand, while denying the making of the oral statements. The question presented by the literature, therefore, is squarely whether or not such booklets, *considered as a whole* and not culling out parts, present a clear and present danger against the government's war effort and the evils which the statute is designed to prohibit.

Portion of the booklet *God and the State* is objected to. Considering it in its entirety it is plain that *the purpose* of the booklet is not to create an attitude of stubborn refusal to salute the flag but *explains the position* of Jehovah's witnesses with reference thereto. Its purpose is to make plain this attitude and stand of Jehovah's witnesses. It is devoted exclusively to an explanation of the responsibility of one in a covenant with Jehovah God *to do His will* as one of His witnesses. From cover to cover it is filled with scriptural quotations showing that Exodus 20:3-5 forbids a true Christian from saluting the flag of any nation. This conclusion is not the interpretation of any man but clearly appears to be the interpretation of Jehovah God. Scriptural instances recorded showing the stand taken by Jehovah's witnesses in ancient times when confronted with the request to bow down to the State, contrary to God's

Law, are given to show that God's law is Supreme and that conscience cannot be violated. The historical origin of the compulsory flag salute is given, showing conclusively that it is of Nazi origin and is used for the purpose of violating conscience. It is pointed out that any criminal or fifth columnist would salute the flag openly and publicly and then secretly work against the interests of the Government and everything that the flag stands for. The booklet then takes up a discussion of the *Gobitis* case from the time it originated in the trial court until it reached this court. The meaning of loyalty is explained and for the children at public school a substitute pledge is offered, showing the loyalty of Jehovah's witnesses.

Next a portion of the booklet *Comfort all that Mourn* is objected to. This booklet treats of the prophecy of Daniel, dictated more than two thousand years ago by Almighty God and written by His prophet Daniel, who stated that he did not understand what he had written and then in answer to his request for understanding Almighty God is recorded as saying: "Go thy way, Daniel; for the words are closed up and sealed till the time of the end." (Daniel 12:8-10) The booklet then points out that the "time of the end" is now here. The world torn by war, famine, pestilence and beset by all manner of wickedness and showing that all human remedies have failed is cited. The cause is placed on the fact that Satan, the Devil, and a host of wicked demons bear rule over the peoples of the earth. The righteous are identified by the scriptures and the facts. These many facts are cited together with other circumstances showing that the prophecy is in course of fulfillment. Daniel's mentioning the "king of the north" is held to picture that ruling power which is totalitarian and dictatorial nations of the earth represented in the Axis combine which seeks to rule the world and to re-establish the "Holy Roman Empire". The "king of the south" is identified as the world ruling power which rules and claims the right to rule the

nations of earth in the name of Democracy, the dominant elements of which are commerce, politics and religion. A consideration of the deadly fight mentioned in that prophecy is treated in detail showing that it matches specifically with the facts of the present world war between the *United Nations* and the *Axis Powers*. The "king of the north", Axis powers, is described, thus: "He shall go forth with great fury to destroy, and utterly to make away many . . . yet he shall come to his end, and none shall help him."—Daniel 11:44, 45.

The obligation of Jehovah's witnesses as God's covenant people to preach the gospel is restated in the booklet showing that they cannot turn aside from that responsibility because of any earthly circumstance or conflict. That with reference to such conflict they remain entirely neutral, using all their time to "comfort all that mourn" with the preaching of the gospel. Among other things as message of comfort Daniel 2:44 is quoted as proof positive that in this present day Almighty God shall set up his kingdom in the earth and that it shall never be destroyed. It is described as a Theocracy ruled from the top down by Jehovah God and Christ Jesus the invisible rulers. As visible earthly governors or princes of this kingdom of righteousness there will be resurrected and brought back to life on earth the faithful servants of Jehovah who lived prior to Christ Jesus and who 'were stoned, sawn asunder, were tempted and were slain with the sword' and who are otherwise described in Hebrews chapter 11.

Then is described in such booklet the everlasting blessings of peace, prosperity, happiness and life eternal on earth. Concerning this kingdom it is declared: "nation shall not lift up a sword against nation, neither shall they learn war any more." (Micah 4:1-4) It is then pointed out that no nation formed by hand of man will bring these blessings and that the "end of the rule of the wicked totalitarian powers is at hand."

The booklet *Refugees* sets forth the facts telling why there are so many people fleeing from the homes and seeking refuge and security. It sets forth the facts showing that religion is distinguished from Christianity and does not offer a haven of rest and protection nor salvation to the refugees wandering aimlessly throughout the earth. From a scriptural standpoint the present world crisis is discussed, together with its effect upon the people. Then are discussed the religious doctrines of "hell-fire" and "purgatory", which find no support in the Bible. The truth about the dead is set forth; the doctrine of the resurrection and God's kingdom as the place of refuge for the refugees is described. It is then followed by an explanation of Jesus' parable of Lazarus and the rich man.

Not one word is written in the booklet about the flag or saluting the flag.

If these booklets can be said to violate the statutes because inciting disloyalty to the nation then the Holy Bible cannot be lawfully possessed or distributed in the State of Mississippi without distributor running risk of being interned in the penientiary for the duration of the war.

They do not teach disloyalty or any other unlawful thing. They do not advance the political cause of any individual. They contain the same message taught by Christ Jesus when He was on earth and nothing else.

Among evils the State contends would clearly and immediately follow distribution of this literature is that the comforting message it has concerning the hope of the dead to be resurrected on earth to life everlasting in a kingdom where there will be no more wars or death subverts the war effort of the nation. That it is not good to teach such things to the people, especially to mothers who have lost their sons in battle.

The State also advances the astonishing doctrine, which is immediately picked up by the Supreme Court of Mississippi, that there are two races in Mississippi, to wit, White

and Negro. That if the Japanese invade Mexico they might threaten the Texas and Louisiana oil fields, which would create unrest in Mississippi. That this unrest would cause discontent among the Negroes and they would contend for more privileges which would result in trouble in Mississippi. That such conditions cause race hatred.

All these sorts of arguments are made without any showing whatever that the literature distributed or the words spoken had anything to do with such vague, indefinite and uncertain contingencies. It is to this extent and on this ground, as the State of Mississippi contends, that the activity of Jehovah's witnesses can be suppressed during war time.

It is claimed that this statute is a war measure and designed to aid directly in the prosecution of the war. In truth it is a subterfuge enactment speeded through the legislature of Mississippi and widely advertised as the 'Anti-Jehovah's witness Bill'. It is significant that since the passage of the law not one enemy alien, propagandist, non-interventionist, fifth columnist, pro-Nazi, pro-Fascist or pro-Communist has been arrested or prosecuted. Only Jehovah's witnesses, hundreds of them, have been the object of attack under the statute and that without any evidence that they affected the national war effort.

It is submitted that there is no evidence whatsoever of clear and present danger. Here we need only to refer to *Bridges* v. *California,* 314 U. S. 252, where, among other things, it is said: "It must be recognized that public interest is much more likely to be kindled by a controversial event of the day than by a generalization, however penetrating, of the historian or scientist. . . . Moreover the ban is likely to fall not only at a crucial time but upon the most important topics of discussion. . . .

"For these reasons we are convinced that the judgments below result in a curtailment of expression that cannot be dismissed as insignificant. . . . For it is a prized American

privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect. . . .

" . . . In accordance with what we have said on the 'clear and present danger' cases, neither 'inherent tendency' nor 'reasonable tendency' is enough to justify a restriction of free expression. But even if they were appropriate measures, we should find exaggeration in the use of those phrases to describe the facts here."

In *McKee et al.* v. *State,* 219 Ind. 247, 37 N. E. 2d 940 (1941), it was held that the literature distributed by Jehovah's witnesses did not violate the "Criminal Syndicalism" Act of Indiana. See also *Butash* v. *State,* 212 Ind. 492, 9 N. E. 2d 88. It has been held that same literature did not violate the sedition statutes of Kentucky. *Beeler* v. *Smith,* 40 F. Supp. 139. See also *Oney* v. *City of Oklahoma City,* 120 F. 2d 861.

F

The judicial branch of the government rather than the legislative authority must decide when the liberty of speech must yield to the police power, and in performing this task the courts should make a deeper inquiry than when property rights are involved because presumption of validity of legislative enactments does not overcome guarantees of the First Amendment.

In *Schneider* v. *State,* 308 U. S. 147, Mr. Justice Roberts said: "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other

personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

Again in the celebrated case of *Herndon* v. *Lowry*, 301 U. S. 242, Justice Roberts said: "The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principles of the Constitution." In this case the court did not permit the presumption of validity of legislative enactments to overcome the Constitution. The presumption of constitutionality was heavily relied upon in *Gitlow* v. *New York*, 268 U. S. 652, and in *Whitney* v. *California*, 274 U. S. 357, but was disregarded entirely in *Near* v. *Minnesota*, 283 U. S. 697, and definitely rejected as not applicable when statutes were applied to activity protected by the First Amendment. See *United States* v. *Carolene Prod. Co.*, 304 U. S. 144, 151-152-n, 153-n.

In *Thornhill* v. *Alabama*, 310 U. S. 88, Mr. Justice Murphy expresses the rule thus: "Mere legislative preferences for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations. *Schneider* v. *State*, 308 U. S. 147, 161, 162."

The booklet "FOUR FREEDOMS" issued by the Office of War Information says: "The exigency of war sets limits

on what information may be given out, lest it give aid and comfort to the enemy . . . Freedom of speech, Justice Holmes has warned, does not grant the right [*"falsely"*] to shout fire in a crowded theatre. When ideas become overt acts against peace and order, then the Government presumes to interfere with free speech. *The burden of proof, however, is upon those who would restrict speech—the danger must be not some vague danger but real and immediate."* [Italics and bracketed word added]

The state has not undertaken in any manner to discharge the burden put upon it by the foregoing cases. It relies solely upon the legislative declaration of policy which contains no findings of fact to support the same. No facts are presented and no argument is made to justify the abridgment by the state *except that the nation is at war.* There is no showing or contention that the activity has affected the loyalty of any person in Mississippi and the state fails to show any direct proof that any war effort of the state or nation is directly affected by the activity of appellant.

Even when the legislature has made specific findings of fact or when the state has discharged its burden of showing the justification for abridging freedom of speech the courts are not required to accept the conclusions of the legislature or to be bound conclusively by evidence offered by the state. The duty still rests with the court to weigh, evaluate, consider and decide whether the arguments in support of the legislation are sufficient and substantial enough to warrant the restriction. If it were otherwise the legislature would become the supreme law of the land. Constitutional rights would become a nullity. The direct statements of the people in the Bill of Rights would be made impotent by legislative findings and statements of policy. Every conceivable kind of unconstitutional action could be taken against the people by legislative fiat supported by findings of fact and conclusions of policy stated by the legislature. It would

make the judiciary an impotent body—mere ministerial agents of the legislature.

The law presumes that the legislature will do its duty and not enact unconstitutional legislation, but this presumption is a very violent one and is not conclusive. It is immediately overcome when it is shown that the legislation has been applied to activity guaranteed by the Constitution.

In this case a more searching inquiry should be made as to the validity of this law because its enforcement is directed solely at a small, hated, despised and very unpopular minority, the Christian group known as Jehovah's witnesses, the object of hatred and abuse from one end of the nation to the other; not because they violate the law but solely because they preach the gospel of God's kingdom which offends tender religious susceptibilities of some bigoted persons who cannot "take" the truth.

The failure of the state to discharge its burden of proof requires that the court declare the statute invalid, both on it face and as construed and applied.

G

The cases discussed show that the rule this court applies does not warrant the abridgment of the right of free speech under the facts and circumstances revealed in this case.

The first case to come before this court under the Espionage Act was *Schenck* v. *United States,* 249 U. S. 47, decided in 1919, in which Mr. Justice Holmes made his much quoted statement about *clear and present danger* and added: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." In that case the defendants, officers of the unpopular Socialist party, were convicted for the distribution of leaflets which urged that conscription was unconstitu-

tional under the Thirteenth Amendment and a "monstrous wrong against humanity in the interests of Wall Street's chosen few". Some of the leaflets went through the mails to drafted men. That case is not in point because it had to do directly with "conscription and drafting" of men into the army. Here in this case the literature and statements do not directly affect the war effort in any way and were confined to a matter of "preaching the gospel", and as to the war effort the appellant was not against nor participating because fully occupied with his God-given "job" of preaching.

Immediately there followed the opinion in *Frohwerck* v. *United States,* 249 U. S. 204 (1919), where the publications were circulated generally; and in the case of *Debs* v. *United States,* 249 U. S. 211 (1919), the defendant made public "dangerous utterances" in an exposition of the Socialist political platform, including a condemnation of war as a defect in our social system, before a Socialist audience.

In *Abrams* v. *United States,* 250 U. S. 616 (1919), the defendants were convicted under the Espionage Act because of public circulation of writings denouncing intervention in Russia and urging curtailment of production with intent to hinder the United States in the prosecution of the war with Germany. Justices Holmes and Brandeis, dissenting, saw in the defendants' conduct no "present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion." (P. 628) At pages 627-631 Mr. Justice Holmes said: " . . . the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. . . . It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. . . . But when men

have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. . . . While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. . . . Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, 'Congress shall make no law . . . abridging the freedom of speech.' . . . "

In this dissent Mr. Justice Brandeis and Mr. Justice Holmes suddenly realized the great length to which the court had been swept in the enforcement of the Espionage Act in the previous cases and *began to call a halt* and show the need to draw a line else all freedom of speech on the supposition of its ill tendency would be forever done away with.

Then came *Schaefer* v. *United States,* 251 U.S. 466 (1920), which involved publication of slighting reference to the war strength of the United States and falsifications which consisted of slight additions to and omissions from news reports. In this case Mr. Justice Brandeis expressed alarm at the tendency of the Supreme Court to apply the Espionage Act to "discourage criticism of the policies of the Government." (P. 494) The dissents in this and other cases showed clearly that perhaps in the original Espionage Act cases as well as in the *Abrams, Pierce, Schaefer* and

other later cases the court although recognizing existence and applicability of the clear and present danger test had not been applying it as rigorously as due in order to effect protection of the constitutional right and at the same time conserve the interest of the government. Justices Holmes and Brandeis clearly apprehended this danger, because in the *Schaefer* case Justice Brandeis said: "This is a rule of reason. Correctly applied, it will preserve the right of free speech both from suppression by tyrannous, well-meaning majorities, and from abuse by irresponsible, fanatical minorities. Like many other rules for human conduct, it can be applied correctly only by the exercise of good judgment; and to the exercise of good judgment calmness is, in times of deep feeling and on subjects which excite passion, as essential as fearlessness and honesty. . . . If the words were of such a nature and were used under such circumstances that men, judging in calmness, could not reasonably say that they created a clear and present danger that they would bring about the evil which Congress sought and had a right to prevent, then it is the duty of the trial judge to withdraw the case from the consideration of the jury;... Convictions such as these, besides abridging freedom of speech, threaten freedom of thought and of belief."

In *Pierce* v. *United States,* 252 U. S. 239, four men were arrested in 1917 in Albany, New York, for making a house-to-house canvass and distribution of a leaflet issued by the Chicago headquarters of the Socialist Party. They were arrested under the Espionage Act. In that case Justice Brandeis again dissented with Justice Holmes and said: "The cause of war—as of most human action—is not single. War is ordinarily the result of many co-operating causes, many different conditions, acts, and motives. Historians rarely agree in their judgment as to what was the determining factor in a particular war, even when they write under circumstances where detachment and the availability of evidence from all sources minimize both prejudice and

other sources of error; for individuals, and classes of individuals, attach significance to those things which are significant to them. And, as the contributing causes cannot be subjected, like a chemical combination in a test tube, to qualitative and quantitative analysis so as to weigh and value the various elements, the historians differ necessarily in their judgments. One finds the determining cause of war in a great man; another in an idea, a belief, an economic necessity, a trade advantage, a sinister machination, or an accident. It is for this reason largely that men seek to interpret anew in each age, and often with each generation, the important events in the world's history."

Gilbert v. *Minnesota,* 254 U. S. 325 (1920), was the next case, but it did not involve the Espionage Act. There was questioned an act of the Minnesota legislature forbidding public speeches against enlistment and the teaching of abstinence from war. The appellant was convicted because at a public meeting he uttered words held to be prohibited by the chapter. Mr. Justice McKenna held that the law was a simple exertion of Minnesota's police power. As to the claim of violation of free speech he cited *Schenck* v. *United States,* supra, and other cases limiting that right. In that case Mr. Justice Brandeis dissented: "Thus the statute invades the privacy and freedom of the home. Father and mother may not follow the promptings of religious belief, of conscience or of conviction, and teach son or daughter the doctrine of pacifism. If they do, any police office may summarily arrest them. . . . Congress legislating for a people justly proud of liberties theretofore enjoyed and suspicious or resentful of any interference with them, might conclude that even in times of great danger, the most effective means of securing support from the great body of citizens is to accord to all full freedom to criticize the acts and administration of their country, although such freedom may be used by a few to urge upon their fellow citizens not to aid the Government in carrying on a

war, which reason or faith tells them is wrong, and will therefore bring misery upon their country.

"The right to speak freely concerning functions of the Federal Government is a privilege of immunity of every citizen of the United States which, even before the adoption of the Fourteenth Amendment, a State was powerless to curtail. . . . Full and free exercise of this right by the citizen is ordinarily also his duty; for its exercise is more important to the Nation than it is to himself. Like the course of the heavenly bodies, harmony in national life is a resultant of the struggle between contending forces. In frank expression of conflicting opinion lies the greatest promise of wisdom in governmental action; and in suppression lies ordinarily the greatest peril. . . . "

Although none of the cases sustaining these convictions under the Espionage Act or the state law in above case present a situation controlling the issues here, we propose that the statements in the above dissenting opinions should be adopted as the principle to be applied here. None of the cases are in point because they directly affected the conscription of manpower and other facts directly connected with the war. In not one of the above cases is there found any conviction on the evasive theory that "disloyalty" or "refusal to salute the flag" was involved. The facts in those cases are entirely different from those presented here.

During the World War and immediately thereafter the excitement and momentum gained against any speech feared to be fraught with danger moved many of the states of the Union to pass Syndicalism and Sedition laws. The excitement of the war carried over and caused New York to prosecute Gitlow under the Criminal Anarchy Act passed after the assassination of President McKinley. The conviction was affirmed by this court. *Gitlow* v. *New York,* 268 U.S. 659 (1925). Gitlow had published a thirty-four page manifesto urging the dictatorship of the proletariat, etc. Justice Sanford for the majority held that the "clear and

present danger" test merely served to decide how far the Espionage Act, which dealt with overt acts, should apply to mere words and rested the conviction primarily upon the "presumption" of constitutionality and legislative findings. In that case the clear and present danger test was apparently rejected as a test of constitutionality of the statute. Justices Holmes and Brandeis dissented, urging that the "clear and present danger" doctrine was the test to be applied and that "whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration." Mr. Chief Justice Hughes, in *De Jonge* v. *Oregon,* 299 U. S. 353, justifies this conviction on the grounds that the "manifesto" circulated advocated the overthrow of the government by violence and unlawful means. This thus distinguishes the *Gitlow* case from the case presented here.

In *Whitney* v. *California,* 274 U. S. 357 (1927), Anita Whitney was convicted of violating the California Criminal Syndicalism Act. She was charged with having taken an active part in organizing the Communist Labor party in California. Because this party was found to have advocated violent revolution against the United States government this court affirmed the judgment of conviction. In the *De Jonge* case Chief Justice Hughes also distinguishes it from the case at bar and justifies the conviction because she willfully and deliberately formed it for the purpose of revolutionary class struggle by "criminal methods". "The defendant was convicted of participating in what amounted to conspiracy to commit serious crimes". In this *Whitney* case Justices Holmes and Brandeis concurred and Mr. Justice Brandeis took pains to point out that a defendant in such a case should have the right to submit to the jury the question of whether in fact there was a "clear and present danger" that harm would actually result. He also took occasion to clarify again the *clear and present danger* rule. Because

of the importance of its relation here it is quoted from at length. He said:

> "But where a statute is valid only in case certain conditions exist, the enactment of the statute cannot alone establish the facts which are essential to its validity. . . .
>
> "This Court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present; and what degree of evil shall be deemed sufficiently substantial to justify resort to abridgment of free speech and assembly as the means of protection. To reach sound conclusions on these matters, we must bear in mind why a State is, ordinarily, denied the power to prohibit dissemination of social, economic, and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence.
>
> "Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American Government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be se-

cured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope, and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

"Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that the serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. . . . But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished rea-

son to believe that such advocacy when then contemplated.

"Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. . . .

"Moreover, even imminent danger cannot justify resort to prohibition of these functions essential to effective democracy, unless the evil apprehended is relatively serious. Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means of averting a relatively trivial harm to society. . . . The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the State. Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violation of the law, not abridgment of the rights of free speech and assembly. . . ."

On the day that the *Whitney* case was decided this court also handed down another opinion which clearly shows that the majority of the court unanimously followed the concurring views of Mr. Justice Brandeis in the *Whitney* case as the rule to be thenceforth followed. We refer to *Fiske* v. *Kansas*, 274 U. S. 380, where an I. W. W. organizer had been

convicted under the Kansas statute prohibiting the advocating of criminal syndicalism orally and through the distribution of printed matter. The official views subscribed to by Fiske were in evidence. The preamble of the constitution of the organization was in evidence. He testified that he did not advocate crime, sabotage or other illegal acts and did not believe in syndicalism. The state court in the *Fiske* case upheld the conviction on the ground that the evils prohibited by the statute could be read between the lines of the literature and stated that they need not accept defendant's testimony as a candid and accurate statement. In spite of such conclusion this court set aside the conviction, and said that it was "an arbitrary and unreasonable exercise of the police power of the state, unwarrantably infringing the liberty of the defendant." In this connection note that the appellant said that he had *not* advocated or told anyone *not* to salute, honor or respect the flag. The literature does not incite such acts. Neither the appellant nor the literature advocates violence, sabotage or disloyalty to the government or state.

We come now to the next case dealing with this question: *Stromberg* v. *California,* 283 U. S. 359 (1931). Yetta Stromberg, an American born Russian, was a member of the Young Communist League, and a supervisor of a summer camp near San Bernardino. Every day at the camp under her direction a red flag was run up bearing a hammer and sickle, emblem of Soviet Russia, and the children were caused to repeat: "I pledge allegiance to the workers' red flag and the cause for which it stands, one aim throughout our lives, freedom for the working class." She was charged with violating the California Penal Code prohibiting display of a red flag in a public assembly "as a sign, symbol or emblem of opposition to organized government, . . . or as an aid to propaganda that is of a seditious character." In declaring the statute invalid Mr. Chief Justice Hughes said: "The maintenance of the opportunity for free political dis-

cussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment." We submit that the *Stromberg* case is controlling here.

Then came *De Jonge* v. *Oregon,* 299 U. S. 353 (1937), which held that mere participation in a Communist meeting did not warrant the application of the state's syndicalism act. In setting aside the conviction this court through Chief Justice Hughes said: "The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political [public] discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the republic, the very foundation of constitutional government."

The latest case dealing with this sort of statute as applied to the expression of ideas considered inimical to the government is *Herndon* v. *Lowry,* 301 U. S. 242. The appellant in that case was a Communist and a Negro paid to organize the Negroes in Georgia, and especially in Atlanta, into communist groups. The literature possessed by him urged that the Black Belt, the deep South, should be made one governmental unit, ruled by the Negro majority. The

books also advocated strikes, boycotts, and revolutionary struggle for power. He was charged with an alleged violation of the law forbidding insurrection. The section upon which the conviction rested read: "Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State shall constitute an attempt to incite insurrection." The statute was passed in 1832 and enforced for the first time in 1932. In that case Justice Roberts, for this court, repudiated the *reasonable tendency* view in the *Gitlow* case as well as the doctrine of "finality" of legislative declarations of policy affecting civil rights. The conviction was set aside because abridging freedom of speech.

More recently the court in *Thornhill* v. *Alabama,* 310 U. S. 88, has taken occasion to make statements which are appropriate here: "The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of the right of free discussion. Abridgment of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government." See also *State* v. *Sentner,* 230 Iowa 590, 298 N. W. 813; *State* v. *Klapprott,* 127 N. J. L. 395, 22 A. 2d 877.

The rule has been restated by the Criminal Court of Appeals of Oklahoma in the case of *Shaw* v. *State,* .. P. 2d .., decided in February 1943. Judge Jones for the court held that a Communist could not be convicted under the Syndicalism statute of that state. In setting aside the conviction he said: "It is strange indeed that there might be

those who seek to overthrow our existing government which guarantees these freedoms and attempt to transform this republic into one where the word of the dictator becomes the law of the land, and then when he is caught practicing these subversive doctrines presents as his defense the very liberties which he would destroy. But if we were to deny to one of these any one of the guaranties provided by our Constitution it would establish a precedent that might in the future cause the arrest and confinement of thousands of our citizens and would more surely result in a violent revolution and overthrowing of our government than these alleged statements of a puny few.

"It has always been a difficult problem to determine whether loose utterance directed at our government, when spoken, might better be left unpunished by the criminal laws of the land with the belief that the good judgment of the overwhelming majority of the citizens would control the evil that might result from any errors of statement made in such utterances so far as the public welfare might be endangered thereby. When people get in a certain frame of mind they should be left at liberty to speak with that freedom with which the magnitude of the supposed wrongs appear in their minds to demand. The question, however, is whether the utterances of criticism of the government are made in a peaceable manner or at such a time and place as might be immediately dangerous to public peace. It is a legislative question, but a serious one, as to what is the best and wisest way to deal with the thoughts, feelings and existing prejudices of the human mind and whether anything can take the place of free public discussion. Often we have seen illustrations where the average person, when given an opportunity to let off a little steam and publicly express himself against the possible wrong-doings of the government, is fully satisfied. It would seem that we should take all steps adequately to protect our existing institutions, but at the same time so preserve them that the wording of the

law may not be construed to make trouble for many patriotic citizens who may disagree with existing conditions in the affairs of our government. . . . If this court were to sustain the conviction it could only be because there is a popular demand for it and this in effect would mean a substitution of mob rule for that of the courts of law."

It seems plain therefore that this court will not stop its inquiry with even an actual and present danger, where that danger is overcome by the gains and advantages of free and full discussion.

What are the *advantages* of free speech? They are many, and they outweigh, undeniably, conceivable disadvantages. When in *this* Republic, even in time of war, every one remains unshorn of his liberty freely to speak, here as nowhere else is generated and thrives, necessarily, the healthy and wholesome "freedom from fear". Boldness, courage, calmness and confidence increase!

He who discerns defects in the manner of executing governmental policies and who then, under *fear* of punishment *by the government,* cravenly OMITS to call attention to those defects is performing, in fact, a disservice to his fellows—is committing an act of unfaithfulness, disloyalty, like unto that chargeable against a trusted watcher who fails to warn his wards of danger seen only by him while there is yet time for all concerned to prevent or to correct the evil.

Likewise, when ALL within the broad expanse of this peculiarly singular "land of LIBERTY" are *free* to speak, in times of both war and peace, there results the additional advantage of both friends and foes being at liberty always openly to identify themselves and to be recognizable as worthy by their own words to be justified or condemned.

But when the *American* constitutional right of every inhabitant to speak freely is *denied* under pretext of "time of war" (or other pretext in peace-time), the resultant strangling and stagnation of thought, growth and advance-

ment not only breeds in friends fear, distrust, suspicion, and even resentment and hostility, but equally serves wrongfully to *shield the foe within* this land who secretly cherishes those evil traits and who by connivance with others of like mind is thus enabled covertly to plot and suddenly to commit overt acts to injure, if not utterly destroy, both government and people.

Can the highest civil officers of this land of liberty, who in time of war as in time of peace are duty-bound to administer NOT *martial* law but constitutional law—can those civil officers judicially and judiciously degrade the sovereign American people's declared ideals to the low and despised level of totalitarian jurisprudence under the subtle pretext that this is a *time of war?*

Surely the American judiciary, even in time of war, is rightly not *less* democratic, not *less* mindful of and responsive to the sovereign people's ideals declared in their Constitution, than are the highest civil officers who commendably discharge, even in this crucial season, their duty to maintain civil rights of the fewer and, dare we say, *less* progressive people of the British Isles!

DANGER to government is far greater and more clear and ever present in times of peace *as well as in time of war* when the right of speech or criticism is suppressed. If men do not have the opportunity to correct evil and misunderstandings by speech, open discussion, then the only means left is usually by violence or other unlawful means. The value of the interests threatened by the conduct as well as by the legislation must be considered and weighed. The only possible way to avoid violence or unlawful action is by always preserving, open and accessible to all, black or white, poor or rich, popular or unpopular, bond or free, the broad avenue of communication—freedom of speech and press.

It is submitted therefore that the conviction should be set aside because the right of free speech is abridged contrary to the Constitution.

TWO

The statute is unconstitutional as construed and applied because it abridges appellant's right of freedom to worship Almighty God by preaching the gospel of God's Kingdom, contrary to the First and Fourteenth Amendments to the United States Constitution.

The undisputed evidence shows that appellant was an ordained minister of the gospel and duly classified as such by his local draft board. He was preaching from house to house, visiting the people in their homes, explaining all about God's kingdom as the only hope for relief from the sufferings of mankind and as the only means to gain life, happiness and peace. In doing this he was and is entitled to the same degree of constitutional protection as would be the clergyman of the leading "church" of the town when uttering words from the pulpit. The fact that appellant was visiting the people in their homes in the manner as did Christ Jesus and His apostles, and there explained Bible prophecy, did not and does not weaken the right to constitutional protection for preachers to speak. As he spoke he was preaching the gospel. This cannot be denied. He came to the homes to explain the Bible and to comfort the women concerning their beloved dead, a custom well recognized long before there were constitutions or even governments in this world. To allow the conviction of appellant in circumstances such as these would open the door to similar prosecutions against some of the clergy for zealous remarks, innocently uttered.

The conviction here is an unconstitutional abridgment of freedom of worship and the right to preach the gospel. We have presented a full discussion of this matter under Point TWO in the brief filed in the case of *Cummings* v. *The State of Mississippi,* which discussion we incorporate here by reference as though printed at length herein.

THREE

The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of the press contrary to the First and Fourteenth Amendments to the United States Constitution.

The right of freedom of the press also is here involved. It is directly concerned because appellant was distributing literature which contained information and opinion. The most fundamental and delicate of human rights is the freedom of the press. Without a free press there cannot be a democratic government. The distributor and the printer are equally protected in the exercise of this right. Appellant was the distributor of the literature in question. The abridgment of his right of freedom of press is unconstitutional, and violates the guarantees of the First and Fourteenth Amendments.

We have fully discussed the right of freedom of the press under the argument of Point THREE in the brief filed by appellant in the case of *Benoit* v. *The State of Mississippi*, pages 19 to 42. For the convenience of the court and to save time and space we incorporate that entire argument herein by reference and here make it a part hereof as though printed at length herein.

FOUR

The statute is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, permits speculation and amounts to a dragnet in the manner construed by the Supreme Court of Mississippi so as to violate the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

For sake of saving time and space this point, insofar as it relates to the three cases, will be discussed here. The briefs in the other two cases incorporate this discussion by reference.

Disloyalty is defined to be anything which affects the "morale" of the people. The court says: "The spirit and morale of the people; their willingness to help financially by personal effort; their support of, belief in, and respect for the government are essential to its successful prosecution. The legislature knew the local conditions—that we have two races about equal in numbers in this state, and that under the stress of the times agitation and subversive influence should not be abroad among the people." (Taylor Record p. 155) Clear and present danger is not required, as heretofore indicated. On this question the court said: "It is true that listeners in this case who testified said this was not the result upon them; that they had a feeling of resentment against appellant. *But in later days, when adversities of war may become more acute, who can say what their reaction may be?* . . . Again, an attitude of disloyalty and disrespect to the flag and the government is not likely to be shown immediately in some overt act evidencing such attitude. This is fruit to be produced after gradual growth and

maturity from the evil seeds which have been sown."—Taylor Record pp. 159-160.

In the *Cummings* case the construction placed on the statute by the court below allows a conviction in the absence of anyone "reading" the literature and upon a showing that defendant refused to salute the flag when requested and when he offered an explanation as to why he did not in response to the request to salute.

In the *Benoit* case the statute has been construed so as to allow conviction when it is shown literature was said to have been distributed to one who professed to be one of Jehovah's witnesses. The complaining witness, a Negro woman, professed to Betty Benoit to be of "good will" and had much of the literature. She was one time a regular subscriber for *The Watchtower*. There it is not shown that the complaining witness read the literature. It is not necessary that the literature be read. Persons reading the literature are not required to be affected by it. If one would believe that at any time in the future a reader might become disloyal the jury could convict: It is not necessary that the "disloyalty" advocated relate to the war effort, but the "disloyalty" made the basis of the statute can be any kind of disloyaly to the nation's policies or interests, domestic or foreign, military or civil. It can even be established by a showing that there are two races of people in Mississippi, white and black, and that some day there might even be dissension between the races. Many other vague, indefinite, and imaginary contingencies that have no relation, either directly or indirectly, to the war effort may be considered in determining whether one is guilty.

The statute prohibits a father from teaching his child that the Bible declares God's law to forbid the salute of the flag. Says Judge Roberds: "Aside from the other elements contained in the statute, it can readily be understood why the jury might conclude that what was said and done here, and the reason behind the arguments, would reasonably

cause such refusal to salute, honor or respect the flag. That is conclusively shown in the cases above cited where children of the members of this sect choose to be expelled from school rather than salute the flag. There were children present on the occasion at the home of Mrs. Joyner. Illustrations of vagueness and indefiniteness are set out in note 70, L. Ed. 322. The question is not without doubt, but we do not think this law is invalid on this ground." Taylor Record p. 161.

In the *Taylor* case Judge Alexander says in his dissent: "Since disloyalty may connote language or acts which go no deeper than a disapproval or lack of sympathy with governmental policy, it lacks a reasonably definite standard of guilt." R. 171.

A jury would be authorized to convict if it found that the hearer or reader believed it wrong to salute the flag or disagree with any governmental policy at any future time regardless of however remote. It is not necessary to prove that the appellant intended such results or that the defendant in fact believed that such would result. In matters such as this there is no yardstick by which influence can be measured. Just when and where the truth of God's word will take hold and persuade an individual no rule can be fixed. Take the case of the apostle Paul as an example. He changed immediately from a persecutor to an apostle. Some read and hear the message and are slow to act. Others never act. Still others disbelieve it and oppose it violently immediately when it is heard. There can be no measuring rod prescribed as to just the circumstances under which one can be influenced in matters pertaining to the Bible. It is plain that action or even belief to the point of "disloyalty" or "refusing to salute the flag" may extend into the indefinite future and neither juries nor trained experts can have the necessary knowledge or information wherewith to measure it. The period during which persuasion may remain effective, during which men will march to the measure of another man's

thought, is in a case like the present one not only completely outside the experience of ordinary men; it is entirely within the realm of the unknown and the field of speculation. Under the statute and the construction given it the jury and judge trying the case are left free to guess, surmise, and upon the product of conjecture award a judgment that interns the citizen for a period of ten years.

The due process clause requires that criminal statutes shall be so framed that those to whom they are addressed may know what standard of conduct is intended to be required, so that men may guide their steps accordingly. *United States* v. *Capital Traction Co.*, 34 A. D. C. 592; *Tozer* v. *United States*, 52 F. 917; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81.

The question here presented was specifically disposed of by this court in favor of appellant in the case of *Herndon* v. *Lowry*, 301 U. S. 242, where Mr. Justice Roberts said: "Every person who attacks existing conditions, who agitates for a change in the form of government, must take the risk that if a jury should be of opinion he ought to have foreseen that his utterances might contribute in any measure to some future forcible resistance to the existing government he may be convicted of the offense of inciting insurrection. Proof that the accused in fact believed that his effort would cause a violent assault upon the state would not be necessary to conviction. It would be sufficient if the jury thought he reasonably might foretell that those he persuaded to join a party might, at some time in the indefinite future, resort to forcible resistance of government. The question thus proposed to a jury involves pure speculation as to future trends of thought and action. . . . The statute, as construed and applied, amounts merely to a dragnet which may enmesh anyone who agitates for a change of government if a jury can be persuaded that he ought to have foreseen that his words would have some effect on the future conduct of others. No reasonably ascertainable stand-

ard of guilt is prescribed. So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment. The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion."

In *Stromberg* v. *California* (1931), 283 U. S. 359, the California statute was declared unconstitutional because of its vagueness and indefiniteness. See also *De Jonge* v. *Oregon,* supra. In *Lanzetta* v. *State* (1939), 306 U. S. 451, in declaring the New Jersey "gang law" invalid, Mr. Justice Frankfurter said: "If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. . . . It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. . . . No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. . . . The applicable rule is stated in *Connally* v. *General Const. Co.,* 269 U. S. 385, 391."

In finding invalid the section of the Alabama Code involved in *Thornhill* v. *Alabama,* 310 U. S. 88, 97-98, Mr. Justice Murphy said: "It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. . . . A like threat is inherent in a penal statute . . . which does not aim specifically at evils within the allowable area of statute control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and per-

vasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship. . . . Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression."

The Supreme Court of New Jersey in *State* v. *Klapprott*, 127 N. J. L. 359, 22 A. 2d 877 (December 5, 1941), declared the "Anti-Nazi Law" of New Jersey invalid as construed to the hate speeches of the Nazi Bund members inciting violence against the Jews. In setting aside the convictions that court found the statute vague, indefinite and a dragnet. The court said: "Suppose such statement was made in the privacy of one's home to two persons there present, or, as it is suggested in the excellent brief of the amicus curiae, suppose a father is instructing his children about the religion of a neighbor and such exposition excites hostility in the children towards those neighbors. This exposition or statement of view would result in the commission of a misdemeanor under the scope of this most sweeping statute. It is not required that the statement be made in a public place. Teachers in our high schools and colleges could be found to be violators of the law out of their lectures on the philosophy of history, or their dissertations on religion, or on the various cults which came into being through the years."

In further support of the contention here urged reference is made to *Smith* v. *Cahoon* (1930), 283 U. S. 564; *Connally* v. *General Const. Co.* (1925), 269 U. S. 391, 392; *Small Co.* v. *American Sugar Ref. Co.* (1925), 267 U. S. 233; *United States* v. *Cohen Groc. Co.* (1920), 255 U. S. 81; *Weeds, Inc.* v. *United States* (1920), 255 U. S. 109.

The Mississippi Supreme Court failed to aid in the construction of the statute so as to narrow its application within the permissible limits but gave the statute as broad an application as was possible to allow so as to permit the widest possible latitude for suppression of liberty.

The statute on its face is vague and indefinite so as to constitute a dragnet. The words "designed and *calculated* to encourage" are viciously general. "Which would incite," are equally vague and uncertain. The words, "disloyalty to the government," are indefinite, and uncertain of limited or defined application. "Disloyalty" is not defined by statute and is not prohibited by any statute. The term "advocate the cause of the enemies" has been construed by the court below to reach any sort of "disloyal" language or acts. Thus the term can include any number of facts and circumstances—the manufacturer, laborer, businessman in innumerable instances of acts or words. As to that part relating to inciting "racial distrust, disorder, prejudices or hatreds", it is patently vague and indefinite. In parts one race predominates over another and what might stir up hatred and prejudice in one locality would not in another. A violation of the statute in that regard would depend on the opinions of the persons hearing the words. No man of ordinary intelligence can safely discern from this statute just what he can say or write to his neighbor, friend, family or the public.

The statute covers equally lawful and unlawful words and conduct and makes no distinction between the truth and falsehoods. The language of the statute may apply not only to a particular act about which there can be little or no difference of opinion, but equally applies to other acts about which there may be radical differences, thereby devolving upon the courts the exercise of arbitrary power of discriminating in the enforcement thereof. The statute gives ample leeway for those who may be in control so to enforce the statute with arbitrary and harsh discrimination that all dissemination of free discussion, oral or printed, can be

stopped. The very fact that these faithful followers of Jesus Christ who refuse to break their integrity to Almighty God and who are guilty of no wrong have been convicted is proof conclusive that the statute is a dragnet. The statute depends for its enforcement, meaning, and understanding upon the political views, whims and opinions of the individuals, and not upon defined precise rules of law, equally applicable at all times throughout the state.

It is respectfully submitted that the statute prescribes no ascertainable standard of guilt and is a dragnet allowing deprivation of liberty in violation of the Fourteenth Amendment to the United States Constitution.

FIVE

The general verdict rendered against appellant will not support a conviction where the undisputed evidence shows that either ground of conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.

It should be noticed that the indictment is based upon two separate kinds of statements. Some are oral and some written. The indictment is not in two counts. The oral statements are based upon two separate clauses of the statute. The written statements are likewise based upon the same two separate clauses of the statute. The verdict was a general one. There is nothing in the record to determine whether the jury believed the testimony of the women as to the oral statements made or if the jury based their verdict solely upon the mere distribution of the literature. Nor can it be determined whether the jury reached the conclusion that the statements violated the "disloyalty" clause of the statute or whether they believed the "salute of the flag" clause had been violated.

In these circumstances if this court reaches the conclusion that the statute has been applied so as to violate the Constitution, and in such event if the verdict is not supported in any particular element on any charge, the judgment must be set aside.

This matter is specifically disposed of in *Stromberg* v. *California*, 283 U. S. 359, 364-368. In that case Chief Justice Hughes said: "As the trial court had treated the three purposes of the statute disjunctively, and the appellant had accepted that construction, we think that the only fair interpretation of her contention is that it related to the validity, not merely of the statute taken as a whole, but of each one of the three clauses separately relied upon by the state in order to obtain a conviction. Her concession as to the interpretation of the statute emphasizes, rather than destroys that contention. . . .

"Having reached these conclusions as to the meaning of the three clauses of the statute, and doubting the constitutionality of the first clause, the state court rested its decision upon the remaining clauses. . . .

"We are unable to agree with this disposition of the case. The verdict against appellant was a general one. It did not specify the ground upon which it rested. As there were three purposes set forth in the statute, and the jury was instructed that their verdict might be given with respect to any one of them independently considered, it is impossible to say under which clause of the statute the conviction was obtained. If any one of the three clauses, which the state court has held to be separable, was invalid, it cannot be determined upon this record that the appellant was not convicted under that clause. . . . It follows that instead of its being permissible to hold, with the state court, that the verdict could be sustained if any one of the clauses of the statute were found to be valid, the necessary conclusion from the manner in which the case was sent to the jury is that, if any of the clauses in question is invalid under the

Federal Constitution, the conviction cannot be upheld."

More recently this rule has been followed in the case of *Williams et al.* v. *State of North Carolina*, 63 S. Ct. 207, 210, where Justice Douglas said: "That is to say, the verdict of the jury for all we know may have been rendered on that ground alone, since it did not specify the basis on which it rested. It therefore follows here, as in Stromberg v. California, 283 U. S. 359, 368, that if one of the grounds for conviction is invalid under the Federal Constitution, the judgment cannot be sustained. . . . To say that a general verdict of guilty should be upheld, though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to countenance a procedure which would cause a serious impairment of constitutional rights."

We submit that if the court finds here that there was no clear and present danger from either the written or oral statements, the conviction should be set aside. Furthermore, if the court reaches the conclusion that any clause of the statute upon which conviction rests is invalid because of impairment of the constitutional rights or vagueness, the conviction cannot stand.

Conclusion

Jehovah's witnesses have been for many years in the State of Mississippi preaching under the direction of the *Watchtower Society* the Gospel of God's kingdom as the only hope for mankind to acquire everlasting life and happiness under a government of righteousness. These truths they must declare regardless of what man may say or do to them. It was not considered necessary to engage in violence or resort to oppressive measures against such covenant servants of Jehovah until the Nazi spirit of regimentation swept the globe.

About two years ago a reign of terror by mob violence

against them began in Texas and Mississippi and spread to every State in the Union, but that did not stop the beneficial activity of Jehovah's witnesses. The blood spilled and destruction thus wrought did not satisfy these enemies of liberty. Frustrated, they introduced in the legislature of that state *House Bill 689*. When the bill became public it was manifest to Jehovah's witnesses that it was directed at them because of their refusal to salute the flag and refusal to discontinue preaching in the state. Jehovah's witnesses appeared at a public hearing in the legislative chambers to protest the passage of the bill and to offer evidence before the committee showing need for an exemption of those preaching the gospel and to protect those who refused to salute the flag for conscience' sake. At this hearing they were denied the right to speak or offer evidence. An effort was made to circulate written evidence among the individual legislators. Because the representative of Jehovah's witnesses refused to discontinue the circulation of the evidence and leave the capitol building he was assaulted and beaten on the spot by a member of the legislature who engineered the bill through the house and senate.

Immediately upon the act's becoming effective Jehovah's witnesses were arrested and have been continuously prosecuted throughout the state in great numbers in the name of and by the authority of the enactment because they refuse to stop preaching. There have been no arrests of any propagandist of the enemy, fifth columnist, saboteur, striker, or any disloyal person under the act. Only Jehovah's witnesses have been arrested. The act is serving its intended purpose of providing an instrumentality to "get" Jehovah's witnesses. In this one cannot escape the prophetic Psalm of the warrior David, who wrote: 'The throne of iniquity shall frame mischief by law.'—Psalm 94: 20.

Against a similar condition and tyranny the founding fathers of this nation fought a rebellion to throw off and out of this land the heavy yoke of their oppressors. In 1765,

in the Virginia House of Burgesses, faced with the 'treason and sedition' act of Great Britain, the infraction of which made him liable to be quartered, drawn or hanged, Patrick Henry among other things spoke:

> "Should I keep back my opinions at such a time, through fear of giving offense, I should consider myself as guilty of treason towards my country, and of an act of disloyalty towards the Majesty of Heaven, which I revere above all earthly kings. . . . For my part, whatever anguish of spirit it may cost, I am willing to know the whole truth; to know the worst, and to provide for it. . . . Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death."

These classic words no longer are meaningless sounds uttered in school declamation contests, but now become the living, burning protest of Jehovah's witnesses against the tyranny of legislative and executive officers of Mississippi who have exceeded their authority and who now assault their own sovereign people by suppressing all speech not pleasing to them, thus denying all liberty of the people under the guise of "sweet peace" and "national unity" which they themselves are destroying by the wrongful enforcement of this legislative act.

The sooner the persecutors of Jehovah's witnesses learn that they cannot, by mobs or by misapplied laws, stop the irresistible flow of Jehovah's message, the better it will be for them. The nailing of Christ Jesus to a tree served only to intensify the preaching of the gospel because all His followers unbreakably held to the unchangeable rule recorded at Acts 5:29, "We ought to obey God rather than men"; and Acts 4:19, "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." From this true and righteous rule even today Jehovah's witnesses cannot separate themselves when confronted with commands to stop preaching the gospel of God's kingdom.

Respectfully and confidently,

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